

Sanjay Vs. Rajeev

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Court : Madhya Pradesh

Decided On : Nov-13-2006

Reported in : IV(2007)BC10

Judge : S.C. Vyas, J.

Appellant : Sanjay

Respondent : Rajeev

Disposition : Petition dismissed

Judgement :

ORDER

S.C. Vyas, J.

1. Heard finally with the consent of both the parties.

This is a petition filed under Section 482 of Cr.P.C. for quashment of the order passed by JMFC, Indore on 1.2.2005 in criminal case No. 1538/01 by which it was confirmed by the order dated 24.6.2006 passed in criminal revision No. 235/05 by First Additional Sessions Judge. Indore. The present petitioner is facing trial for the offence punishable under Section 138 of the Negotiable Instruments Act before learned Magistrate. During trial, two interlocutory applications, one under Section 91 of the Cr.P.C. and second under Sections 45, 65 and 67 of the Evidence Act

were moved on behalf of present petitioner, before the learned Magistrate. Those two applications were considered by the Trial Court and were dismissed. That order was confirmed by the Revisional Court also.

2. Learned Counsel for the petitioner submitted that the signatures on the cheque are not in dispute in this case, and as per the defence of the present petitioner, the amount of cheque was already paid to the complainant, but later on complainant interpolated in that cheque and entered another date and made certain entries and then presented the cheque in the Bank. He submitted that the Bank account of the present petitioner in Bank of India. Hamidia Branch, Bhopal, was already closed long back and the suit was filed by that Bank against the petitioner. Learned Counsel for the petitioner submitted that he moved an application for calling the Bank record pertaining to that suit and the account of present petitioner, to show that cheque bearing serial number either less or more than the present cheque, from the same cheque book have been entered in that account and, thereafter, the account was closed which shows that forgery has been committed by the complainant. He further submitted that another prayer was made to get the cheque examined by some handwriting expert, to prove such forgery committed by the complainant. These applications were dismissed by learned Trial Court without any valid reason and, therefore, he prays that in the interest of justice those applications be allowed and an opportunity be provided to the petitioner to call the Bank record and to get the cheque in question examined by an expert to prove his defence.

3. The order passed by Additional Sessions Judge. Indore shows that the matter was considered in detail by learned Additional Sessions Judge and it was found that no documents regarding the Bank account of the present petitioner were filed in the Trial Court. It was also found that signatures on the cheque are admitted in this case and, therefore, there is no necessity to get the questioned documents examined by any handwriting expert. Trial Court has also considered those points and after due consideration, rejected these applications. There appears no perversity in the orders passed by the two Courts below.

4. Second revision is specifically barred by the provisions under Section 397 of the Cr.P.C. and this petition appears to be a petition of second revision in the garb of a petition under Section 482 of the Cr.P.C. Such petitions are not required to be allowed in view of judgment of Supreme Court in the case of Amarnath and Ors. v. State of Haryana AIR 1977 SC 2185.

5. Therefore, the petition has no merits and is liable to be dismissed. However, on the request of learned Counsel for the petitioner, Trial Court is directed to provide appropriate opportunity of leading defence evidence to the petitioner, either orally or by way of filing documents at the appropriate stage of the trial.

With these directions the petition is dismissed.

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