HON'BLE SMT. JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION No:109 OF 2023

ORDER:

This Criminal Petition is filed by the petitioner to quash the order dated 07.11.2022 in Crl.M.P. No.1500 of 2022 in C.C. No.138 of 2017 on the file of Judicial Magistrate of First Class-Cum-Junior Civil Judge, Alamuru.

2. **Case of the petitioner is thus:**

(a) the impugned order of the learned Magistrate is contrary to law, weight of evidence and probabilities of the case; the learned trial Court gravely erred in dismissing the application filed under Sections 91 and 311 Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C'); the learned trial Court failed to see that the documents required to prove the guilt of the accused and with other formal grounds prayed to quash the order dated 07.11.2022 in Crl.M.P. No.1500 of 2022.

3. As seen from the record, basing on the report of the petitioner, a case in Crime No.31 of 2016 was registered of the offence under Section 465, 466, 469, 420, 120-B IPC. After completion of investigation, the investigating officer laid charge sheet of the said offences against respondent Nos.2 to 7.

4. During trial, petitioner who is none other than defacto complainant filed this petition contending that the then Bank Manager/ PW.5 submitted relevant documents without endorsing/ attesting and since the same are certified by the concerned person. The Petitioner could not mark the said documents and they are necessary documents to prove the guilt of the accused and as

such the present bank manager, who is custodian of the documents is to be concerned to produce documents from Canara Bank, Kadiyam Banch and also to add him as additional witness i.e., LW.7.

5. Respondent Nos.2 and 3/ accused Nos.1 and 2 resisted the said petition stating that there are no grounds to add the bank manager as additional witness and direct him to produce documents, all the documents are already filed before the Court and PW.1 marked Ex.P2 to P6. Document No.2 is also marked as Ex.P21. Document No.3 is corresponding to execute A3. Respondent Nos.4 & 5 / accused Nos.3 and 4 adopted the counter affidavit of respondent Nos.2 and 3 at the culmination of enquiry, the learned Tribunal dismissed the petition vide order dated 07.11.2022.

6. Admittedly, the alleged offences are under Sections 465, 466, 420, 409 r/w 34 IPC and it is incumbent on the part of the prosecution to prove the ingredients of the punishable sections and in such a course, since the prosecution could not mark the documents issued by the then branch manager as they are not properly attested, prosecution filed the instant petition so as to issue summons to the then bank manager to produce documents and also to add the branch manager as additional witness.

7. During the course of arguments, learned counsel for the petitioner submitted that petitioner who is none other than the defacto complainant is confining to one prayer to one relief i.e., issue summons to the bank manager to produce the registered documents. Since the petition is filed seeking two

reliefs, learned trial Court dismissed the said petition and apart from that the learned trial Court also observed that there are no grounds to entertain the petition. As seen from the petition, it is categorically mentioned that the then bank manager had issued photo copies without attesting the same and as such the photo copies are not marked through the concerned witness and as such it is just and proper to issue summons to the bank manager to produce documents.

8. The main allegations based on documents said to have been forged and the petitioner sought for production of certified copies of sale deeds stands in the names of accused Nos.1 and 2, RTGS transactions, attested copy of suspect sheets and order copy in O.A. No.41 of 2013. It is also not in dispute that so far trial is not completed and if the documents are not produced injustice would be caused to the respondents and on the other hand they will be afforded an opportunity to cross examine the witnesses. Added to it, receiving documents is entirely different from mere getting evidence. Respondents can get an opportunity to cross examine the concerned witness if the documents are marked through any witness. For the foregoing reasons this Court is of the considered view that the main relief of issuing summons to the bank manager to produce petition listed documents can be considered to meet ends of justice.

In the result, this petition is allowed in part, quashing the order dated 07.11.2022 passed in Crl.M.P. No.1500 of 2022 by the learned Judicial

Magistrate of First Class-cum-Junior Civil Judge, Alamuru in respect of issuance of summons to the bank manager to produce documents.

As a sequel thereto, pending miscellaneous petitions, if any, shall stand closed.

SUNITHA GANDHAM, J

.10.2026
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