

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition Nos.1481 & 1584 OF 2023

Between:

Mohd Sadiq

... Petitioner

And

The State of Telangana,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad & Another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 17.03.2023
Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.P. No. 1481 & 1584 of 2023

% Dated 17.03.2023

Mohd Sadiq ... Petitioner

And

\$The State of Telangana,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad & Another ... Respondents

! **Counsel for the Petitioner:** Sri. Mirza Nisar Ahmed Baig

^ **Counsel for the Respondents:** Public Prosecutor

>HEAD NOTE:

? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER
CRIMINAL PETITION Nos.1481 & 1584 OF 2023

COMMON ORDER:

1. Criminal Petition No.1481 of 2023 is filed questioning the dismissal order in Criminal M.P.No.692 of 2022 in C.C.No.435 of 2009 whereby the learned Judicial Magistrate of First Class (Special Mobile Court), Nizamabad, dismissed an application filed by the petitioner/Accused to examine himself for the purpose of adducing evidence in defence, by order dated 15.09.2022, which case is filed for the offence under Section 138 of the Negotiable Instruments Act.

2. Criminal Petition No.1584 of 2023 is filed questioning the dismissal order in Criminal M.P.No.693 of 2022 in C.C.No.976 of 2009, whereby the learned Special Judicial Magistrate of First Class (Mobile), Nizamabad, dismissed an application filed by the petitioner/accused to examine himself for the purpose of adducing evidence in defence, by order dated 15.09.2022, which case is filed for the offences under Sections 290, 323, 352, 504 and 506 of IPC.

3. Since the petitioner and the 2nd respondent are one and the same in both these petitions, they are heard together and disposed off by way of this Common Order.

4. The 2nd respondent has filed two different complaints against the petitioner herein, one for the offence under Section 138 of the Negotiable Instruments Act and the other for the offences under Sections 290, 323, 352, 504 and 506 of IPC. The said cases were filed by the complainant in the year 2009.

5. The grievance of the petitioner herein is that he cannot be denied his right to defend himself by producing defence evidence. If an opportunity is not given by the Court to defend himself, it would amount to causing prejudice to the petitioner's defence.

6. Learned counsel further submits that the trial Court instead of refusing the prayer of the petitioner to examine himself in defence, ought to have permitted and concluded the proceedings. The delay in the case was on account of the petitioner approaching this Court by way of filing Criminal Revision Case Nos.3154 and 3159 of 2017 against the orders of the trial Court refusing to send the cheque and other documents for the purpose of forensic examination. This Court

had granted interim stay of all further proceedings on 08.12.2017 and the case was finally disposed off on 09.02.2022. In the said circumstances, it cannot be said that the petitioner is in any way responsible for the delay. The petitioner is ready to obey any condition which would be imposed while permitting him to adduce defence evidence.

7. On the other hand, it was argued on behalf of the respondents that the case is of the year 2009 and this petitioner has been deliberately dragging on the case. The trial Court has rightly found that the petition filed for defence examination was with an intention to drag the matter and no useful purpose would be served and as rightly held by the learned Magistrate, the petitions deserved to be dismissed for the reason of the conduct of the petitioner in protracting the cases for a period of 14 years.

8. Admittedly, cases were filed by the 2nd respondent in the year 2009 and they are pending since 14 years. It appears that the petitioner has used every trick to delay the cases for all these years. The details of the case proceedings is filed. The case was posted for trial from 08.07.2011.

9. Learned Magistrate found that the petitioner/accused was given ample opportunity to lead evidence, but except seeking adjournments on one pretext or the other, no steps were taken by him to adduce evidence on his behalf, for which reason, defence evidence was closed on 23.11.2017. Thereafter, the petitioner approached this Court by filing revision vide CrI.R.C.Nos.3154 and 3159 of 2017 questioning the refusal of the trial Court to send the cheque/promissory note and authorization agreement for the purpose of FSL opinion. Stay was granted by this Court and by order dated 09.02.2022, both the Criminal Revisions were dismissed by a detailed and reasoned order. This Court found that the petitioner has been taking time without adducing evidence and several adjournments were taken on the ground of compromise also. Having deliberately dragged the proceedings continuously, the petitioner herein has resorted to filing the criminal revisions.

10. Further, this Court found that no reasons are given as to why applications for sending the documents for expert opinion were not done immediately after the case was listed for trial or during the course of evidence of the complainant. Accordingly, this Court, found that there are no grounds to interfere with the finding of the learned

Magistrate in refusing to send the cheque, promissory note and other documents for the purpose of FSL examination and report.

11. The petitioner has now in continuation of the delay tactics adopted, has filed petitions to examine himself in defence. In the petition filed by this petitioner in both the cases except stating that on account of Covid and stay in Criminal Revision Case, defence evidence could not be adduced. No reasons are given as to what would be the evidence that is likely to be brought on record in support of defence. A general statement is made in the petition stating that if the petitioner is permitted to record his evidence, then he will be able to clinchingly establish that the exhibits marked and evidence recorded in the complaint are all false, forged and fabricated for the purposes of filing the case. Except such general and vague statement, the necessity of entering into the box is not stated. The petitioner was given chance to cross-examine the witnesses when the documents were brought on record and his defence was already stated by way of cross-examination. During the examination of the complainant, the documents are denied by the petitioner. Again entering into witness box to say that the documents are false and fabricated would only be reiterating what is cross

examined. Denying the prayer to examine himself will not in any manner prejudice petitioner's defence.

12. I do not find any valid grounds to permit the petitioner to examine himself in the back ground of protracting the case for 14 years by taking adjournments on one or the other including the ground of compromise. The petitioner's conduct and the proceedings clearly indicate that the present applications are filed to further protract the proceedings, which cannot be permitted.

13. In the said circumstances, both the Criminal Petitions are dismissed and the trial Court is directed to conclude the proceedings in both the cases, within a period of one month from today. Consequently, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 17.03.2023

Note: L.R.Copy to be marked.

kvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION Nos.1481 and 1584 OF 2023

Dt.17.03.2023

kvs