

GAHC010081202021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./143/2021

M/S ROSE BUILDERS
REPRESENTED BY ITS PROPRIETOR SRI DILIP DAS, AGED 54 YEARS, S/O
LATE HIREN DAS, R/O HOUSE NO. 11, DAS VILLA, SUB-BYELANE 3,
LACHITNAGAR, BYE LANE-7, P.O.- ULUBARI, DIST- KAMRUP(M), ASSAM-
781007

VERSUS

M/S JUVARAJ HARDWARE AND ANR
REPRESENTED BY ITS PROPRIETOR SRI PRADIP MEDHI, LAKSHMI PATH,
BELTOLA TINIALI, GUWAHATI-781028, DIST- KAMRUP (M), ASSAM

2:PRADIP MEDHI
S/O LATE HARMOHAN MEDHI
R/O LAKSHMI PATH
BELTOLA TINIALI
GUWAHATI-781028
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. A K RAY

Advocate for the Respondent : MR. A KHANIKAR (R-2)

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 06.05.2024

Heard Mr. A.K. Ray, learned counsel for the petitioner. Also heard Mr. A. Khanikar, learned counsel for the respondent No.2.

2. The petitioner has filed an application under Section 401/482 Cr.P.C. and Article 227 of Constitution of India against the order dated 17.02.2021 passed by the learned JMFC, Kamrup(M) in C.R. Case No. 2178/2014, refusing to send the specimen signature of the accused/petitioner to FSL for expert opinion.

3. The case of the petitioner is that the respondent as a complainant filed a complaint case against the present petitioner under Section 138 N.I. Act before the CJM, Kamrup(M) due to dishonour of three cheques being cheque Nos. 590679, 590678 and 590684 and the case was registered as C.R. No. 2178/2024, now pending before the JMFC, Kamrup(M).

4. According to the petitioner, from the very beginning of the case, and also in his statement under Section 313 Cr.P.C. which was recorded on 07.09.2016 clearly stated that he has lost 22 number of cheques and he immediately informed the matter to the Bank. The present cheques in question are within the said lost cheques. The petitioner also stated that he did not know how the respondent/complainant got the cheques. As the accused/petitioner did not issue those cheques to the respondent/claimant, he filed a petition being No. 1535 dated 31.05.2019 praying for examination of the signature of the petitioner in the cheques by forensic authority. After hearing both sides, the learned trial court allowed the prayer of the petitioner and fixed for defence witness on 06.08.2019. On 06.08.2019, the bank manager of SBI, Kahilipara branch

appeared as defence witness No. 2 and clearly stated that the present petitioner/accused has given written information to the bank about the loss of 22 number of cheques and also exhibited some documents along with the letter dated 28.06.2013. On 19.10.2019, the complainant submitted the original cheques before the learned trial court and accordingly the present petitioner took the said cheques for forensic examination vide Ext. Nos. 1, 2 and 3. But as the specimen signature was not sufficient, the petitioner submitted 18 number of specimen signatures along with Pan card and driving licence for forensic examination which reflected in order dated 07.02.2020.

5. After Covid-19 pandemic, the case was fixed on 17.02.2021 and on that day, the learned trial court overlooking the earlier order dated 24.06.2019 and without applying of mind, comparing the signature of the accused/petitioner with the alleged cheque and passed order dated 17.02.2021 which reads as follows- "it appears that the signature of the accused in the exhibits mentioned above and the 18 specimen signature of the accused as well as driving licence and pan card are identical." Accordingly, the learned trial court fixed the next date for defence witness without sending the signature of the petitioner for forensic examination.

6. According to the learned counsel for the petitioner when court is comparing handwriting or signatures, it cannot become expert opinion and it must refrain from playing role of expert as opinion of court may not be conclusive. Therefore, court should be slow and hesitant to base its findings only on comparison made by it. The learned counsel for the petitioner has relied upon a judgment of Hon'ble Supreme Court vide (2012) 12 SCC 406 (*Ajay Kumar Parmar vs. State of Rajasthan*).

7. On the other hand, the learned counsel for the respondent No.2 has no objection if the specimen signature of the accused/petitioner be sent for forensic examination.

8. Under the facts and circumstances of the case, prayer of the petitioner is allowed. The trial court is directed to take initiative to send the specimen signature of the present petitioner for forensic examination in accordance with law.

9. As it appears that the case is pending in the court since 2014, the learned trial court is directed to dispose of the matter within two/three months from the date of the receipt of the order.

10. In the result, criminal revision petition is allowed and stay, if there be, stands vacated.

11. In view of the above, the criminal revision petition stands disposed of.

JUDGE

Comparing Assistant