

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.4 of 2015

and

M.P.No.1 of 2015

A.Inayathullah ... Petitioner/Accused

Vs

A. Ramesh ... Respondent/Complainant

Criminal Revision filed under sections 397 and 401 of Criminal Procedure Code to call for the records and set aside the order passed in Crl.M.P.No.2070 of 2014 in C.C.No.77 of 2013 pending on the file of the learned Judicial Magistrate (Fast Track Court), Vellore District dated 02.12.2014,

For Petitioner : Mr.E.Kannadasan

O R D E R

Request of the petitioner to refer the disputed cheque dated 18.02.2013 to the Director, Central Forensic Science Laboratory, Hyderabad, Andhra Pradesh, to find out the age of the signature, has been rejected, vide order made in Crl.M.P.No.2070 of 2014 in C.C.No.77 of 2013 on the file of the learned Judicial Magistrate (Fast Track Court), Vellore District dated 02.12.2014 and that the same is impugned in this Criminal Revision Case on the grounds inter alia that the Court below has failed to consider the petitioner's case that he has not issued the cheque to the respondent and from the very beginning, the petitioner has denied issuance of the cheque.

2. Reliance is placed on the decision in Elumalai Vs. Subramani, reported in 2011 (3) CTC 616, this Court held as follows:

The aforementioned opinions of the reputed authors on this subject as narrated above would make it abundantly clear that it is not impossible to discover age of the ink. Hence, the plea that the procedures have not evolved so far in this country is no longer available and it cannot be acceded to. Going by the above

clippings in the authorities, it transpires that it is not at all difficult task to step into the experiments under the guidelines of illustrious experts in this field. The authorities and the officials concerned have to take initiatives to evolve procedures for experiments with latest technology for achieving improvement on the subject. [para 23[b]]

On the basis of choosy and discerning performance of researches, the authors have provided procedures and devices, with reference to the names of chemicals and reagents to be utilised, to solve the issue and it is incumbent upon the experts to put the authoritative theories and the latest proved and established technologies to empirical use. They have to take the inventiveness drawing the proven and accepted principles from well settled authorities and the Government have to provide necessary latest infrastructures in the Document Division of the Forensic Sciences Laboratory and also allot necessary funds for the constitution of sophisticated laboratory which is a full-fledged one in this regard. [para 24]

The scientist can elect non-destructive technique where there is no scope of destruction of disputed document. When the authorities effectively suggest various methods for subjecting a document for this purpose, it is high time for the scientists of this State and the Government committed them in use in practice. When the science has flourished to show enormous, remarkable, striking and much advanced improvements in all other fields, while sufficient ways and means are available in this sphere, they cannot be disregarded and thrown overboard. The State shall take every possible step to provide the justice delivery system to unearth actual evidence available in a case. If the scientists or experts come across any difficulties, they can very well bring to the notice of the authorities concerned. At their request and proposal, the Government shall allocate necessary means. [para 25]

The expression that there is no scientific method available anywhere in the country or State, more particularly in the Forensic Science Department for scientific assessment of the age of handwriting to offer opinion is far from acceptance. A careful survey of the above authorities would unveil a fact that settled plans of actions for experiments are very much available and

when one steps into such experiments, there is further scope for upswing in the technology. It is bounden duty of the official concerned to follow the procedures. As mentioned in para 12(b) of this judgment, even anterior to 1964, in a decision rendered by the Supreme Court, in Shashi kumar Banerjee's Case (supra) before the trial Court, the expert had stated that the determination of the age could be ascertained definitely by a chemical test. It reveals that even prior to 1964, chemical tests were in application to find out age of ink. Now, the science in this branch has prospered to considerable dimensions and it cannot hereafter be contended that it is not possible to ascertain the age of the ink by scientific method and exact result could not be secured. The scientists/experts should appear before the Courts with opinionated evidence in this regard, on their successful accomplishment of this assignment. [para 26[a]]

The advancements in establishing the facts in this field as a science continue through today. The explosion of modern technology has influenced every facet of our lives, from introducing new avenues of written communications to improvements in ink and ergonomic design of writing instruments. [para 26 [b]]

The above said discussion on the strength of the authorities available before the Court is only indicative, not exhaustive. It is not a sole-source training manual. [para 27]

Adverting to the facts of the present case, since various scientific avenues are available for finding out the age of the ink in a document, it must be subjected to tests as suggested by various scientists. I follow the ratio in the decisions in Kalyani Baskar's case and T.Nagappa's case above, and direct to refer the disputed document to such examination in order to provide an opportunity when a good material is available, to rebut the presumption as per law, by non-destructive method in this regard. (Emphasis supplied). [para 28]

3. Let me consider some of the decisions of this Court on the above issue.

(a) In S.Gopal Vs. D.Balachandran, reported in (2008) 1 MLJ (Cr1) 769, revision petition was directed against an order passed by the learned Magistrate under Section 45 of the Indian Evidence

Act, rejecting the prayer for sending the disputed cheque to the Forensic Laboratory at Hyderabad to determine the age of the ink of the signature of the petitioner.

(b). Following the judgment in Yash Pal Vs. Kartar Singh, reported in AIR 2003 Punjab and Haryana 344, at paragraph Nos.14 and 15, this Court held as follows:

"14. As rightly observed by the Punjab and Haryana High Court in the ratio referred to above, if an old ink is used by the person, who assisted the drawer who had already put his signature in the cheque, to fill up the matter, no useful purpose will be served if such a cheque is analysed by the expert for rendering an opinion.

15. It is found that the age of the ink cannot be determined by an expert with scientific accuracy. Further, the use of old ink manufactured long ago will definitely create a dent in the opinion furnished by an expert. Therefore, there is no necessity for sending the disputed cheque admittedly signed by the petitioner to an expert for his opinion. The order passed by the learned Judicial Magistrate I, Erode in C.M.PNo.2915 of 2007 in C.C.No.1287 of 2006 does not suffer from any illegality or impropriety. Therefore, there is no warrant for interference with the well considered order passed by the Trial Court."

(c). It is worthwhile to consider the judgment in Yashpal's case, wherein the defendant in a suit, filed an application under Order 26 Rule 10-A of Cr.P.C., and Sections 45 and 46 of the Indian Evidence Act, for a direction to send the disputed pronote therein, and to obtain a report from the Forensic Science Laboratory, Government of NCT Delhi, to find out the age of the ink used on the stamps. The Civil Judge dismissed the same. In the Civil Revision Petition, the High Court of Punjab and Haryana, at paragraph No.5 held as follows:

"5. A perusal of the afore-mentioned provision shows that a discretion has been vested in the Civil Court to get any scientific investigation conducted only if it thinks necessary or expedient in the interest of justice. The basic rationale of the provision is that if the opinion of the scientific investigation is going to help in extracting the truth and the determining the controversy raised in the dispute before the Court then such an investigation could be permitted. However, in the present case, such investigation is not likely to help to conclusively prove that the writing dated 11.2.1998 was infact recorded earlier because the age of the ink cannot be determined on the basis of the

writing. If the ink is manufactured five years before the date of the execution of the document and used on 11.2.1998 for the first time then instead of resolving any controversy it would create confusion. Therefore, no useful purpose could be served by allowing such an application. It is true that opinion of expert is relevant under Sections 45 and 46 of the Indian Evidence Act, 1872 but in the present case that has to be read with Order 26 Rule 10A of the Code. The basic rationale is whether such scientific investigation is going to advance the cause of justice and would be necessary for adjudicating upon the rights of the parties...."

(d). In V.Makesan Vs. T.Dhanalakshmi, reported in 2010 (1) MWN (Cr.) DCC 93, the issue considered was as to whether, a disputed cheque could be sent for expert opinion, for the purpose of ascertaining the age of the ink used for writing. The lower Court, directed the cheque to be sent for opinion. After considering the earlier decisions, at para No.7, Honourable Justice S.Nagamuthu at paragraph No.7, held as follows:

"7. A perusal of all the above judgments would go to clearly indicate that as of now, there is no expert in terms of Section 45 of the Indian Evidence Act available who could be in a position to offer any opinion regarding the age of the ink by adopting any scientific method. In view of all the above, I am inclined to interfere with the order of the learned Sessions Judge, Fast Track Court No.III, Coimbatore."

(e). In A.Sivagnana Pandian Vs. M.Ravichandran, reported in (2011) 2 MLJ (CrL.) 595, at paragraph No.32, this Court held as follows:

"....I am fortified in my view that the disputed document has to be referred to the expert for ascertaining the age of the ink and practical hardships, if any, sustained by the expert shall be brought to the notice of the Court and the Court shall thereafter act according to the settled principles and procedures, in affording appropriate opportunity to the accused to prove his defence."

(f). In A.Devaraj Vs. Rajammal, reported in (2011)(3) MLJ (CrL.) 440, dismissal of an application filed under Section 45 of the Indian Evidence Act to send the disputed cheque to the expert opinion to determine the age of the ink, was the challenge. After considering R.Jagadeesan's case [(2010) 2 MLJ (CrL.) 659], judgment in S.Gopal's case reported (2008) 1 MLJ (CrL.) 769 (Mad.), a learned single judge was of the view that the disputed documents has to be sent to Central Forensic Department, Hyderabad.

From the reading of A.Devaraj's case, it could be noticed that there was nothing to indicate as to whether the Court had considered as to whether such expertise, is available in the Central Forensic Sciences Laboratory, Hyderabad. So also in Elumalai's case, reported in 2011 (3) CTC 616.

(g).In K.Vairavan Vs. Selvaraj, reported in 2012 (5) CTC 596, accused under Section 138 of the Negotiable Instruments Act filed an application to forward the cheque in question, to an expert to determine the age of the ink and the said petition was dismissed by the Magistrate. After considering S.Gopal's Case reported in (2008) 1 MLJ (Crl.) 769 and V.P.Sankaran Vs. Uthirakumar, reported in 2009 (6) CTC 29, R.Jagadeesan Vs. N.Ayyasamy, reported in 2010 (1) CTC 424, V.Makesan Vs. T.Dhanalakshmi, reported in 2010 (1) MWN (Cr.) DCC 93, Yash Pal Vs. Kartar Singh, reported in AIR 2003 P&H 344, Indira Balasubramaniam and others Vs. S.Subash, in Cr.P.NPD No.3082 of 2008 dated 17.08.2009, Decon Constructions Vs. J.A.Stephen and Krishnammal, reported in 2011 (1) MWN (Cr.) DCC 84 : 2011 (3) RCR (Civil) 481 : 2011 (2) RCR (Crl.) 628, and A. Devaraj Vs. V.Rajammal, reported in 2011 (2) MWN (Cr.) DCC 9, at paragraph Nos.24 and 25, this Court in K.Vairavan's case held as follows:

" 24. A reading of the above provision would make it crystal clear that an expert is the one who has got special skill in science or art or in questions as to identity of handwriting or finger impressions. Here the identity of handwritings and finger impressions would denote an expert who can compare the disputed handwriting or finger impression with the admitted handwriting or finger impression. Such experts are available and, therefore, the documents are sent to those experts for opinion. But, there is no such expert available in India to offer any opinion regarding the age of the ink used for writing the disputed document so as to satisfy the requirements of Section 45 of the Evidence Act.

25. In this regard, we may come back to the judgement of Justice S.Nagamuthu in R.Jagadeesan's case cited supra [2010 (1) CTC 424], wherein it is not the view taken by the learned Judge that there is no scientific method available for ascertaining the age of the ink used for writing the disputed document. The learned Judge has only held that there is no expert available, who can scientifically examine the same. Even now, the learned Judge had ascertained from the Forensic Science Department, Government of Tamil Nadu, Chennai, that there is no expert , who can offer such opinion. Now, the Assistant Director, Central Forensic

Laboratory, Hyderabad has also stated that there is no such expert available anywhere in India. Thus, it is crystal clear that, as of now, there is no expert available in India. In A.Sivagnana Pandian's case cited supra [Crl.R.C. (MD) No.145 of 2010], Justice S.Palanivelu has stated that in Forensic Science it is possible to ascertain the age of the ink. Regarding such conclusion arrived at by the learned Judge, I have no different opinion. Science has developed so much and that it is possible. As per the leading books referred to by the learned Judge, there is a scientific method available. But, knowing a method alone would not serve the purpose to implement the method. Equipment's are necessary and person with the expertise knowledge is also necessary. If only there is a person who has special skill in the field who is armed with sufficient equipment's, then only he can use the known scientific method to offer his opinion. But, in respect of age of the ink though there are scientific method available in India, there is neither such scientific expert available nor equipment available. It is because of these reasons, I have to necessarily hold that for getting an opinion regarding the age of the ink, the disputed document cannot be sent anywhere as of now. I would make it clear that in future, if any expert emerges and equipment's are also made available, then, after identifying him, the court may forward the disputed documents to him for opinion. Until such time, the document cannot be sent anywhere for the purpose of getting opinion regarding the age of the ink used for writing the disputed document."

In the above case, this Court has ascertained, as to whether there is any expert available for offering opinion regarding the age of the ink used in the document. Observations of this Court after ascertaining the remarks from the Central Forensic Laboratory, Hyderabad, is worthwhile reproduction. Paragraph Nos.20 and 21 are extracted hereunder:

" 20. Very recently, the President of Central Forensic Science Laboratory, Hyderabad, Andhra Pradesh State was invited to give a lecture in the Tamil Nadu State Judicial Academy at Chennai on the subject "disputed document". During the course of interaction, a question was posed to him - Is there any expert available for offering opinion regarding the age of the ink used for writing the disputed document? - In categorical terms, he informed that there is no such expert available not only in his Laboratory but in any Laboratory throughout the country at present and,

therefore, it is not at all possible to offer any opinion regarding the age of the ink used in the disputed document. When a specific query was made during interaction to the President as to what had happened to the documents already sent to his Laboratory seeking such opinion, he said that the said documents were only returned without offering any opinion.

21. Now, in order to ascertain as to whether there is any expert really available in the said laboratory since the request is to send the disputed document to the said laboratory in Hyderabad, this Court through the Registrar called for remarks from the said laboratory in Hyderabad. The Assistant Director and Scientist 'C', Central Forensic Science Laboratory, Hyderabad, has given his remarks through fax message to this Court vide Ref. CFSL(H)DOC/MISC/2012-13 wherein he has stated as follows:-

"This is to submit that as there is no validated method, this laboratory does not undertake the examination for determining the relative/absolute age of the ink of the writings/signatures."

From the above fax message from the Central Forensic Science Laboratory, Hyderabad, it is crystal clear that there is no expert available in the said Laboratory also to offer any opinion regarding the age of the ink."

4. Judgment in Elumalai Vs. Subramani, reported in 2011 (3) CTC 616, has been rendered in the year 2011. However in a decision in Panneerselvam Vs. S.Bakkiam, reported in 2013 (1) MWN (Cr,) DCC 158 (Mad), when a similar request was made by the petitioner therein, arising out of the Negotiable Instruments Act, 1881 (26 of 1881), following a previous decision of this Court in R.Jagadeesan Vs. N.Ayyasamy, reported in 2010 (1) MWN (Cr.) DCC 97, a learned Single Judge of this Court, dismissed the revision petition. Short facts in Panneerselvam's case are as follows:

"2. The learned counsel for the petitioner submits that the petitioner is arrayed as accused in S.T.C.No. 306 of 2009 instituted by the respondent herein under Section 138 of the Negotiable Instruments Act. Pending the said proceedings, the petitioner has filed CMP No. 854 of 2011 contending that the ink in which the petitioner had put his signature in the cheque in question and the ink by which the dates and amounts were filled varies and therefore, while disowning his liability to pay the cheque amount, the petitioner sought for sending the cheque in question to the

forensic authorities for comparison so as to disprove the case of the complainant/respondent herein. Further, the cheque in question is non-MICR NCE coded cheque which was not in existence at that point of time and therefore it is clear that the cheque in question was issued long back. Therefore also, the petitioner sought for comparison of the signature by which the dates and amount were filled in the cheque in question by an expert. The Court below, without considering the above aspects has dismissed the application and therefore the present Civil Revision Petition is filed."

5. Paragraph Nos.7 to 9 of the judgment in R.Jagadeesan Vs. N.Ayyasamy, reported in 2010 (1) MWN (Cr.) DCC 97 : 2010 (1) CTC 424, considered in Panneerselvam's case, are extracted.

"4. At the outset, the petitioner admits his signature in the cheque in question and he only contends that the ink by which the dates and amount filled therein differs. In other words, the petitioner seeks to ascertain the age of the ink by which the dates and amounts were filled in the cheque which cannot be done in view of the decision of this Court reported in (R. Jagadeesan vs. N. Ayyasamy and another) (2010 (1) CTC 424). In that decision, this Court held that there is no such facility available in India, especially in Tamil Nadu to compare the age of the ink. In Para Nos. 7, 8 and 9, it was held as follows:-

"7. In order to ascertain the correctness of the said statement, this Court had requested the learned Additional Public Prosecutor Mr. N.R. Elango to request either the Director or the Assistant Director, Document Division, Forensic Science Department, Chennai, to be present before this Court to explain the position. Accordingly, today, Mr. A.R. Mohan, Assistant Director, Document Division, Forensic Science Department, Government of Tamil Nadu, Chennai is kind enough to be present before this Court. According to him, he is the Head of the Document Division of the department. On a query made by this Court regarding the above position, he would explain to this Court that there is no scientific method available anywhere in this State, more particularly, in the Forensic Science Department, to scientifically assess the age of any writing and to offer opinion. However, he would submit that there is one institution known as Neutron Activation Analysis, BABC,

Mumbai where there is facility to find out the approximate range of the time, during which the writings would have been made. It is a Central Government Organisation. According to him, even such opinion cannot be exact. He would further submit that since it is a Central Government Organisation and confined only to atomic research, the documents relating to prosecutions and other litigations cannot be sent to that institution also for the purpose of opinion. He would further submit that if a document is sent for comparison, with the available scientific knowledge, opinion to the extent as to whether the same could have been made an individual, by comparing his admitted handwritings or signatures, alone could be made. He would further submit that if there are writings with two different inks, in the same document, that can alone be found out. But he would be sure enough to say that the age of the writings cannot be found out at all to offer any opinion.

8. In view of the above clear and unambiguous statement made by no less a person than the Head of the Department of Forensic Science, I am of the view that the whole exercise adopted in various Courts in this State to send the disputed documents for opinion to the Forensic Department in respect of the age of the writings and the documents is only futile. If any document is so sent, certainly the department will say that no opinion could be offered. As a matter of fact, the Assistant Director would inform the Court that already many such documents, which were sent to them by various Courts in the State for such opinion, have been returned by them with the report that no such opinion could be offered.

9. In view of all the above, in my considered opinion, sending the documents for opinion in respect of the age of the writing on documents should not be resorted to hereafter by the Courts unless, in future, due to scientific advancements, new methods are invented to find out the age of the writings."

6. After considering the said judgment, at Paragraph Nos.5 & 6 in Panneerselvam's case, this Court held as follows:

"5. In the light of the above decision, the Court below is right in rejecting the plea of the petitioner to send the disputed cheque in question for ascertaining the age of the ink or the variation in the ink in the subject matter of the cheque.

6. The Court below also found that if the cheque in question was issued long back, as contended by the petitioner/accused, the same can be proved by way of bank records and therefore also the comparison of the admitted signature and the alleged disputed signature are unnecessary. Such a reasoning assigned by the court below is valid and justified. Further, the petitioner has filed the instant application only after three years from the date of institution of the case by the respondent. In any view of the matter, in the light of the decision of this Court, mentioned supra, the relief sought for by the petitioner cannot be granted. The Civil Revision Petition is therefore dismissed. Consequently, Connected M.P. No. 1 of 2011 is closed."

7. Though after ascertaining as to whether, there is any expert available in this country, and in particular, Central Forensic Sciences Laboratory, Hyderabad and the Director of Forensic Sciences, Chennai, this Court has held that reference cannot be made to any expert for ascertaining the age of the ink used on the disputed document/cheque, the present petition has been filed challenging the order rejecting the abovesaid prayer.

8. Reverting back to the case on hand, before the lower Court, complaint has been taken on record in C.C.No.77 of 2013 and at this stage petition under Section 45 of the Indian Evidence Act r/w Section 139 of the Negotiable Instruments Act, has been filed for a prayer to send the cheque, for the abovesaid purpose.

9. Perusal of the impugned order shows that before the Court below, the complainant has been examined. Seven documents have been marked. Four witnesses have been examined and at that stage, application has been filed.

10. Cheque is stated to have been issued on 18.02.2013. As rightly observed by the Court below, petition under Section 45 of the Indian Evidence Act r/w Section 139 of the Negotiable Instruments Act, has been filed after the examination of the accused. There is no competent authority to ascertain the age of the ink and the said facility is stated to be not available in the Forensic Departments in India. There is no illegality in the finding recorded by the Court below, warranting interference. For the reasons stated supra, order made in CrI.M.P.No.2070 of 2014 dated 02.12.2014 in C.C.No.77 of 2013 on the file of the learned

Judicial Magistrate (Fast Track Court), Vellore District, does not call for any interference. Hence, the Civil Revision Case is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (Lok adalat)

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Sub Asst. Registrar

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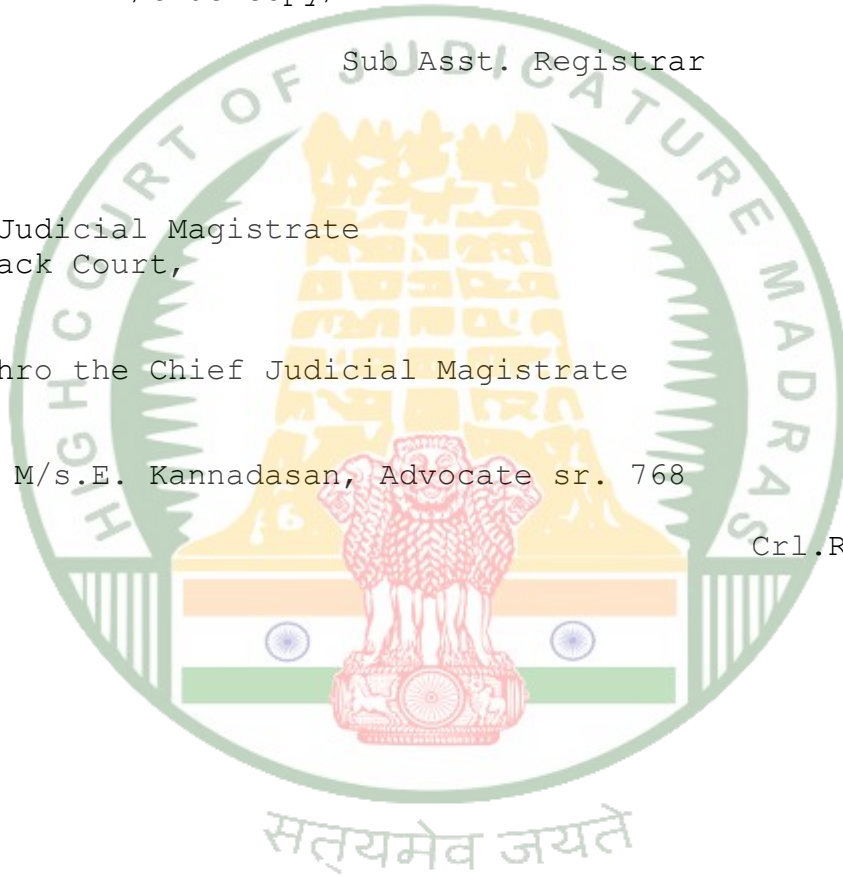
1. The Judicial Magistrate
Fast Track Court,
Vellore

2. do thro the Chief Judicial Magistrate
Vellore

1 cc to M/s.E. Kannadasan, Advocate sr. 768

CrI.R.C.No.4 of 2015

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