

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

CIVIL REVISION PETITION NOS.1500,
1572, 4098 AND 5008 OF 2010

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C.R.P. Nos.1500 and 1572 of 2010:

Bande Siva Shankara Srinivasa Prasad	... Petitioner
Vs.	
Ravi Surya Prakash Babu and others	... Respondents

C.R.P.No.4098 of 2010:

Konda Ganesh	.. Petitioner
Vs.	
Kummari Pandurangaiah	... Respondent

C.R.P.No.5008 of 2010:

Saila Lakshman Rao	.. Petitioner
Vs.	
Lella Srinivasa Reddy	... Respondent

DATE OF JUDGMENT PRONOUNCEMENT: 18th DECEMBER, 2015

SUBMITTED FOR APPROVAL:

SANJAY KUMAR, J

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

*** THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
THE HON'BLE SRI JUSTICE SANJAY KUMAR**

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<Gist:

>Head Note:

! Counsel for petitioner in C.R.P.
Nos.1500 and 1572 of 2010 : Sri T.S. Anand
! Counsel for petitioner in C.R.P.
No.4098 of 2010 : Sri Ch. Janardhan Reddy
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No.5008 of 2010 : Sri Yellanki Pullarao
^Counsel for respondents in : Sri M.V. Suresh
C.R.P.Nos.1500 and 1572 of 2010 Government Pleader for Home
^Counsel for respondent in : Sri Hari Sreedhar
C.R.P.No.4098 of 2010 Government Pleader for Home
^Counsel for respondent in : Government Pleader for Home
C.R.P.No.5008 of 2010

? CASES REFERRED:

1. 2008 (3) ALT 409 (DB)
2. AIR 1960 AP 359
3. (2009) 9 SCC 221

THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

**CIVIL REVISION PETITION NOS.1500,
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COMMON ORDER
(*per Hon'ble Sri Justice Sanjay Kumar*)

By order dated 13.08.2010, a learned Judge directed that C.R.P.Nos.1500 and 1572 of 2010 be placed before a Bench of two or more Judges for consideration. On 29.09.2010, the Division Bench that dealt with the matter opined that it should be considered by a Full Bench. That is how C.R.P.Nos.1500 and 1572 of 2010 along with connected C.R.P.Nos.4098 and 5008 of 2010 came to be placed before this Full Bench.

The operative portion of the reference order dated 13.08.2010 of the learned Judge reads as under:

‘The conspectus of the precedent law as above would show that some of the learned Judges of this Court have taken a view that if there is long time gap between the admitted signature and disputed signature, no purpose would be served by referring the disputed handwriting/signature to handwriting expert. Some other learned Judges have taken a view that in view of scientific advances, the handwriting expert can compare the admitted and disputed signatures even if there is a long time gap between them. The inconsistency between the two line of cases would certainly create a dilemma for the Courts below. Of late, there is increasing number of suits for recovery of money based on promissory notes in which invariably defendants take a plea that suit promissory note is forged or fabricated. There is also increasing number of instances where the parties to the proceedings seek indulgence of the Court to send disputed documents to handwriting expert at a belated stage. Therefore, in my considered opinion, it would be appropriate if the matter is adjudicated by larger Bench to decide the question whether a civil Court is barred from sending disputed handwriting/signature to handwriting expert if the time gap between the admitted signature and disputed signature is very long.

The office is therefore directed to place both the civil revision petitions before the Hon'ble the Chief Justice for constituting a Bench of two or more learned Judges for deciding the question.’

In effect, the question referred for decision by the learned Judge was whether the Court would be barred from sending the disputed

handwriting/signature to an expert if the time gap between the admitted signature and the disputed signature was very long. However, the reference order passed thereafter by the Division Bench, which led to the matter being placed before us, went a step further. Significantly, the very same learned Judge who had passed the order dated 13.08.2010 presided over the said Division Bench. It was brought to the notice of the Division Bench that another Division Bench of this Court had held in **JANACHAITANYA HOUSING LIMITED V/s. DIVYA FINANCIERS**^[1] that there can be no set time limit for filing an application for sending handwriting/signatures for comparison and expert opinion. This decision was interpreted by the Division Bench to mean that even if there were no contemporaneous signatures, an application under Section 45 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872') could be moved. Referring to an earlier decision rendered by a learned Judge dating back to the year 1960 in **ANNAPURNAMMA V/s. B.SANKARARAO**^[2], which held to the effect that a belated application would be of no avail if there was a lapse of time between the admitted signature and the disputed signature, the Division Bench opined that these two views needed to be reconciled, though they had no direct relation but had a bearing on the question referred to the Division Bench. This was the basis for the reference to a Full Bench.

As the crucial question referred for consideration to this Full Bench was whether contemporaneity of signatures was an essential pre-requisite for the Court to direct comparison thereof for expert opinion, the Full Bench constituted earlier, comprising Hon'ble Sri Justice G.Raghuram and two of us (RR,J and SK,J), passed a detailed order on 21.09.2012 soliciting expert opinion through the aegis of the Central Forensic Science Laboratory, Ramanthapur, Hyderabad, on three issues. It would be useful to extract this order in its entirety:

'The issue referred for consideration of and resolution by this Bench is: whether a Civil Court may not send a disputed handwriting/signature to a handwriting expert (under Section 45 of the Evidence Act) if the time gap between the admitted signature and the disputed signature is very large.

During the course of hearing, we are informed that there are instances where handwritings or signatures referred for expert opinion; either the Govt. Examiner of Questioned Documents or a private expert

are being returned to the referring Court for furnishing contemporaneous handwritings/signatures. The Judicial precedents placed before us also do not throw much light on the essential issue whether a contemporaneity is a non-derogable substrate for furnishing expert opinion of questioned handwritings/ signatures.

In the circumstances, the following issues are, in our view relevant to be considered before proceeding to answer the reference.

- a) Are contemporaneous handwritings/signatures always or normally necessary for comparison and report;
- b) What is the meaning of “contemporaneous”; and what is the measure of contemporaneity;
- c) Why are Examiner of Questioned Documents frequently returning documents sent to them for opinion, to the referring Court for contemporaneous signatures/ handwritings? Is current handwriting science/expert protocols in the area incapable of comparing handwritings/signatures without “contemporaneous” models for comparison; whether in all circumstances or only in specific situations; and if in specific situations, what are the range of circumstances where contemporaneous handwritings/signatures required for rendering an opinion?

As the above issues are more appropriately addressed by an expert in the field, we direct the Director of Central Forensic Science Laboratory, Ramanthapur, Hyderabad to call upon the Government Examiner of Questioned Documents or any other appropriate expert in the field to draw up a report on the three issues referred to above, enclosing any scientific/academic material to support the conclusions of such expert. The Director, Central Forensic Science Laboratory, Ramanthapur, Hyderabad shall furnish to this Court the report as above directed within four weeks from today.

A copy of this order shall be forthwith communicated by the Registry to the Director, Central Forensic Science Laboratory, Ramanthapur, Hyderabad and to the learned Govt. Pleader for Home.

Print the name of the learned Govt. Pleader for Home.

Post after four weeks.’

Pursuant to the above order, the Central Forensic Science Laboratory, Hyderabad, submitted Report dated 22.11.2012, titled ‘Importance of Contemporaneous Handwritings/Signatures’. This Report was prepared by the Chairman and two members of the Central Forensic Science Laboratory, Hyderabad. As regards the three queries posed by this Court under the order dated 21.09.2012, the Report addressed specific comments *vis-à-vis* each of them. The queries and the comments made thereon are extracted hereunder:

- ‘a) **Are contemporaneous handwritings / signatures always or normally necessary for comparison and report?**

Comment: Document Experts prefer to have writings / signatures that are contemporaneous which are as close to the document in question and where possible of a similar nature.

It is not always necessary to have the contemporaneous writing for comparison purpose. However, handwritings/signatures are normally necessary for better evaluation of the writing habits and establish the range of natural variation of the writer during the period.

b) **What is the meaning of “contemporaneous”; and what is the measure of contemporaneity?**

Comment: ‘Contemporaneous’ means ‘occurrence at same period of time’. No specific measure could be assigned to the element of ‘contemporaneity’. One of the famous authors in the field of examination of documents, ‘Ordway Hilton’, in his famous book ‘Scientific Examination of Questioned Documents’, states that **material written two or three years before or after the disputed writing serve as satisfactory standards and the same is enunciated in page 11 of Annexure enclosed.**

c) i) **Why are Examiners of Questioned Documents frequently returning documents sent to them for opinion, to the referring Court for contemporaneous signatures / handwritings?**

Comment: Document Experts examine carefully and thoroughly the disputed writings and the standard writings and compare them ‘like-with-like’. There are two kinds of standards, informal which mean documents previously executed in routine course and formal which is request writing. In case of request writing the writer may intentionally disguise his or her own writing in order to avoid detection. In some cases the writing may be executed with the non-dominant hand in order to change the appearance of the handwriting as well as the request writings may be genuinely written in simplified manner so that some writing features may not be accountable when compared with the corresponding questioned writings/signatures. In such instances it becomes necessary to have the normal and naturally written contemporaneous writing which exhibits sufficient individuality and accountable features to reach a meaningful opinion of authorship. Depending upon the nature of the documents under examination, in some cases, the expert may consider that all the writing habits as occurring in the disputed writings could not be collectively accounted for from the standard writings supplied, and if some more standard material/writings written over period of time of

execution of the disputed writings are supplied, facilitates further examination, which may lead to a definite opinion regarding the authorship or otherwise of the disputed writings/signatures.

C ii) **Is current handwriting science / expert protocols in the area incapable of comparing handwritings / signatures without ‘contemporaneous’ models for comparison; whether in all circumstances or only in specific situations; and if in specific situations, what are the range of circumstances where contemporaneous handwritings / signatures required for rendering an opinion?**

Comment: Even in the absence of ‘contemporaneous’ models for comparison, examination of documents could be carried out which may lead to one of the three following conclusions, depending upon the nature and data afforded by the exhibits of the documents:

- i) The person who wrote the standard writings / signatures also wrote the disputed writings / signatures.
- ii) The person who wrote the standard writings / signatures did not write the disputed writings / signatures.
- iii) It has not been possible to express any opinion regarding the authorship or otherwise of the disputed writings / signatures as all the writing habits as occurring in the disputed writings / signatures could not be collectively accounted for from the standard writings / signatures supplied for comparison.

Only in specific circumstances, the document examiners seek for contemporaneous admittedly genuine writings/signatures to form a definite opinion to the extent possible.’

The experts thereafter explained the technical issues involved in undertaking comparison of handwritings/signatures and concluded the Report, stating thus:

‘Identification of handwriting is based on ‘like-with-like’ comparison. During the process of identification consideration must be given to the writing variation. No two samples of writing written by any individual are identical in every detail, since variation is an integral part of natural writing.

Nature and extent of variation differs from person to person and, in its way, forms an important element in identification process. Writing variation is due to various factors – external factors like writing position, writing instrument, care of execution, etc; physical and mental

conditions like fatigue, intoxication, drug use, illness, nervousness, etc. These factors produce a varying degree of variation. The variation is commensurable in its degree with the intensity of the cause.

The advanced age of the writer and the quality of writing he prepares in the course of time may introduce greater variation between writings written at widely separated dates.

Variation does not preclude identification of the writing. In fact, it forms an additional factor that serves to personalize the writing.

Thus, handwriting can be most accurately identified when the standard writings and the questioned writings were written under *comparable* conditions.

It is necessary to demonstrate that not only the disputed writing has the qualities and habits of the standard writing, but also that the deviations from the basic patterns (nature and extent of variations) that occur in the disputed writings are such as can be predicted from the variations in the standards.

Limited comparable standards sometimes complicate the matter of identification / non-identification. As such, adequate and suitable standards be supplied.

If questioned writing purports to be by an aged writer, it is especially desirable that the standards should not only be near the date of the writing in question but it should also, if possible, be shown that they were written under similar health conditions.

In cases involving forged signatures not only should comparison signatures be obtained from documents of similar importance, but if possible also from documents which are roughly contemporary with those in question.

Writing of an adult will show an obvious steady change with passage of time. In these circumstances provision of a whole set of signatures written over a period of years will prove of inestimable value to the document examiner.

When serious illness occurs, a signature often undergoes a remarkable change in a very short period and if a suspect 'will' is dated near the day of death, standard (admittedly genuine) signatures covering this period are essential if reliable evidence of the authenticity or otherwise of the signature is to be established.

Normally, in the case of a typical adult, basic writing habits change gradually. Therefore, material written *two or three years before or after the disputed writing* serve as satisfactory standards, but as the lapse of years between the date of standards and questioned material becomes greater, the standards have a tendency to be less representative. Consequently, an effort should always be made to procure some standards (admittedly genuine writings / signatures) written near in

date to the disputed matter.’

The gist of the experts’ opinion, emerging from the above Report, is to the effect that it is not always necessary to have contemporaneous handwritings/signatures for comparison. However, as a general rule, it would be desirable to undertake comparison of admitted handwritings/signatures with disputed handwritings/signatures which fall within the range of 2 or 3 years from each other. Therefore, there can be no hard and fast norm as to when comparison can or cannot be undertaken owing to the time lag between the two sets of handwritings/signatures. Various other factors would have to be taken into consideration, as opined by the experts, quoted hereinbefore. Each case would turn upon its own facts and circumstances relating to the time lag, the change in the handwriting/signature, the capability of correlating the two sets and ultimately, the opinion of the expert himself as to whether the two sets can be compared. It is therefore not open to the Court to refuse to entertain an application seeking comparison of disputed handwritings/signatures with admitted handwritings/ signatures on the ground of a long lapse of time between the two sets of handwritings/signatures.

Sri T.S. Anand, learned counsel appearing for the petitioners in C.R.P.Nos.1500 and 1572 of 2010, would submit that the question referred for consideration by the learned Judge was widened in scope and import by the Division Bench and therefore, that aspect of the matter also needs to be addressed. According to the learned counsel, apart from the issue of contemporaneity of handwritings/signatures, the other question referred for consideration to this Full Bench is as to the stage at which an application for expert opinion on disputed handwritings/signatures should be made. He would rely upon the reference order of the Division Bench in this regard and invite us to go into this issue also.

It is no doubt true that the reference order passed by the Division Bench not only spoke of the issue of contemporaneity of the handwritings/signatures to be compared by the expert but also adverted to the perceived inconsistency between two earlier decisions of this Court, one by a Division Bench and the other, by a learned Single Judge. However, even if there is a conflict between the two, the view expressed by the Division Bench would invariably prevail over that expressed by the learned Single Judge.

The question of reconciling the two views would therefore not arise in our considered and respectful view. However, as Sri T.S. Anand, learned counsel, brought up this issue and the Division Bench's reference order also adverted to it, we deem it appropriate to examine the two decisions.

In **ANNAPURNAMMA**², the learned Single Judge was dealing with comparison of signatures by the trial Court in exercise of powers under Section 73 of the Act of 1872. The signatures so compared were of the years 1944 and 1950. In this context, the learned Single Judge observed as under:

‘There is hardly a correct method of approach. In the first place, it is not of much use to compare a signature of a person said to have been made in 1950 with that made six years earlier in 1944 as there is likely to be some change in the signature. That apart, in the absence of any marked differences between the two signatures, which indicated prima facie that the disputed signature could not, in any circumstances, have been that of the same person whose admitted signature had been produced, a Court could not be justified in rejecting the disputed signatures as not genuine. I have been taken through the reasons given by the trial Court which are set out in paragraphs 25 and 26 of the lower court's Judgment.

It is only too well-known that the appearance of a signature depends on many factors. The type of pen used, the ink, the quickness of the flow of the pen, the paper on which it was written, the place where the signature is put e.g., a signature on a rough paper would not be exactly the same as that on a smooth paper. In the same way, a signature written with a rough pen would not be the same as a signature with a good smooth-writing pen. Similarly if some smooth pad or some such object is used for resting the paper at the time of the signature, then that signature would be different from the signature put on a paper resting on a rough surface.

There are many factors which have to be taken into consideration in effecting a comparison of the two signatures, and although a Court could apply its own eyes and its own mind to determine whether a particular signature is resembling another it would be going beyond the ordinary limits of the capacity of a Court to constitute itself as a Handwriting Expert and try to compare the signature without all the gadgets and devices which are available to a Handwriting Expert, besides the lack of expert knowledge which a Handwriting Expert possesses.

When oral evidence clearly established that a person executed a certain document it would be completely unnecessary for the Court to embark upon an investigation into the signatures by comparison. Having regard to the opinion expressed by the Court below, I had to take the trouble of comparing the signatures in Ex.B-3 with the

signatures contained in Ex.A-1, although it was not quite correct to do so having regard to the long interval of time between the two signatures. I find that the two prominent letters 'B' and 'Z' are almost exactly similar.'

It is clear from the above extract that the case before the learned Single Judge was not one arising under Section 45 of the Act of 1872 relating to expert opinion on disputed handwritings/ signatures. The learned Judge was not dealing with the issue of capability of an expert to compare signatures which were six years apart and on the other hand, found upon his own comparison that the signatures tallied. The learned Judge, no doubt, added the caveat that the comparison undertaken by him was not quite correct having regard to the long interval of time between the two signatures, but this observation need trouble us no longer in the light of the expert opinion tendered by the Central Forensic Science Laboratory, Hyderabad, which is to the effect that there can be no hard and fast rule as to a time lag definitively rendering comparison of handwritings/signatures futile.

The Division Bench judgment in **JANACHAITANYA HOUSING LIMITED¹** was rendered upon a reference made by a learned Single Judge of this Court on the question as to whether an application under Section 45 of the Act of 1872 for expert opinion on disputed signatures could be entertained at a later stage of the suit, including when the suit was coming up for arguments after the entire trial. Contemporaneity of the signatures in dispute and the admitted signatures was not even in issue before the Division Bench. Upon due consideration of the case law on the point, the Division Bench answered the reference as under:

'For the reasons aforementioned, we answer the reference thus: "No time could be fixed for filing applications under Section 45 of the Indian Evidence Act for sending the disputed signature or writings to the handwriting expert for comparison and opinion and same shall be left open to the discretion of the court; for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of the each case".'

Pertinent to note, merely because an application seeking expert opinion is filed belatedly, it would not automatically mean that the signatures sent for comparison are not contemporaneous. In effect, there is no real conflict between the learned Single Judge's opinion in **ANNAPURNAMMA²**

and the decision of the Division Bench in **JANACHAITANYA HOUSING LIMITED¹**. The *ratios* of these two judgments operate in wholly different fields and do not impinge upon each other. The view expressed by the Division Bench in **JANACHAITANYA HOUSING LIMITED¹** still continues to hold the field and there is no dissenting view expressed by a co-ordinate Bench warranting examination thereof by this Full Bench.

It may however be noted that an expert opinion under Section 45 of the Act of 1872 is not binding on the Court as it is only advisory in nature. Whether such an opinion should be admitted and how much weight should be given to it are aspects which would ultimately lie within the domain of the Court, as evidence of an expert is liable to be interpreted like any other evidence (**MALAY KUMAR GANGULY V/s. DR. SUKUMAR MUKHERJEE** [\[3\]](#)).

We accordingly answer the reference as under:

It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/signature with the admitted handwriting/ signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting/ signature for comparison to an expert merely because the time gap between the admitted handwriting/signature and the disputed handwriting/signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed handwritings/signatures with admitted handwritings/signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the expert concerned to voice his conclusion as to whether the disputed handwriting/ signature and the admitted handwriting/signature are capable of comparison for a viable expert opinion. The view expressed by the Division Bench in **JANACHAITANYA HOUSING LIMITED V/s. DIVYA FINANCIERS¹**, as to the stage of the proceedings when an application can be moved by a party under Section 45 of the Indian Evidence Act, 1872, continues to hold the field and there is no necessity for this Full Bench to

address that issue.

The matters may be posted before the Court concerned for adjudication on merits.

R. SUBHASH REDDY, J

RAMESH RANGANATHAN, J

18th DECEMBER, 2015

Note: L.R. copy to be marked.
B/o Svv

SANJAY KUMAR, J

[\[1\]](#) 2008 (3) ALT 409 (DB)

[\[2\]](#) AIR 1960 AP 359

[\[3\]](#) (2009) 9 SCC 221