

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.4994 of 2015

ORDER :

This petition is filed by the petitioner/Accused under section 482 Cr.P.C seeking to quash the proceedings in CrI.R.P.No.71 of 2014 on the file of III Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, dated 14.08.2014 confirming the orders dated 06.05.2014 in CrI.M.P.No.651 of 2014 in C.C. No.40 of 2014 on the file of VIII Special Magistrate, Hastinapuram.

2) The petitioner is the accused in C.C. No.40 of 2014 on the file of VIII Special Magistrate, Hastinapuram. It is the outcome of a private complaint of the 1st respondent T.Venkatesham for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The learned Magistrate has taken cognizance for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The grave man of the complaint petition taken cognizance supra, reads that the accused out of his friendship with complainant in April, 2013 approached him to lend Rs.5,00,000/- in need and on persisting requests, the complainant arranged funds and given hand loan of Rs.3,50,000/- to him on 19.05.2013 in the presence of one Mahesh Reddy and Pandu and accused passed an *appupatram*-cum-receipt

to that effect and promised to repay with interest in two months and for several demands even after lapse of time for repayment, he issued the cheque No.519781, dated 16.09.2013 for Rs.3,50,000/- drawn on State Bank of Hyderabad, Lalaguda branch which was issued on 05.09.2013 in discharge of the debt and the cheque presented on 18.09.2013 that was returned dishonoured for insufficiency of funds, on 19.09.2013; and he caused issued legal notice dated 17.10.2013 which was received by accused on 22.10.2013 with no reply and thereby committed the offence to take cognizance. It is at the post cognizance stage and after service of summons and appearance of accused, he filed the application in CrI.M.P.No.651 of 2014 under Section 45 of the Indian Evidence Act contending that having gone through the record after service of summons it revealed the blank cheque and blank stamped paper duly signed by him and issued in favour of one Rapolu Narasimha was misused by the complainant by obtaining from him, whereas said Rapolu Narasimha obtained as security in the year 2011, for the loan taken and even the loan was cleared to Narasimha, he did not return the blank signed documents including the cheque and by misuse of the same the present complainant is also instituted a civil suit O.S. No.2134 of 2013 on the file of VII Senior Civil Judge, Ranga Reddy based on the documents by stating as if he executed an *Appu Patram* dated 19.05.2013 and issued

cheque bearing No.16913 for Rs.3,50,000/- which are not true and in the suit he is contesting by filing written statement and he opposed also the attachment before judgment petition with the same defence and the present cheque dishonour proceeding is nothing but abuse of process. Thus, the documents are to be sent for scientific examination to decide its genuineness which are with two hand writings and preparation and manipulation at different times. The same opposed by the complainant by counter saying that it is the premature stage without even commencement of trial in seeking to send the documents, though those are required to be exhibited in the evidence of the complainant and it is premature for him to contend the writings do not belong to him in seeking to send the same to the expert and sending of the documents will serve no use and the questioned documents writings to be compared with admitted writings in defence to serve any purpose apart from no technology to know the age of writings and thereby sought for dismissal.

3) The trial Court having heard by order dated 06.05.2014 dismissed the petition saying in **Gowry Shankar V. J.L.Babu**^[1] it was held of no obligation on the Court to send the disputed documents to the expert unless it is only the recourse on facts of the case of necessity in sending for within the judicial discretion, and in **M.Pentaiah V. Parameshwar**^[2] also it was held that

the Court also can compare hand writings etc., under Section 73 of the Indian Evidence Act unless it forms an opinion of sending the document for expert for opinion necessary, for any expertise required; having regard to the above and for the reason of the original *appupatram* **is** filed in the civil suit, sought for sending to this record in Crl.M.P.No.837 of 2014 is dismissed, this petition is dismissed, in also saying in another case, the learned Magistrate held that, it is not possible for hand writing expert to ascertain and opine as to the age of the hand writing as the Forensic Science Lab returned the document on that ground in that case.

4) The learned Sessions Judge in the Crl.R.P.No.71 of 2014 having confirmed the same by disposal of the revision petition observed that the purpose of sending *Appupatram* to expert not properly explained in the petition and from the age advancing, the signature also changes, the signature is of the year, 2011 according to the accused/petitioner and now in seeking to send in the year, 2014 to expert, an expert cannot determine the signature and unless the trial Court considered the opinion of necessity of sending it need not, as observed by referring to the two expressions and thereby there is nothing to interfere.

5) It is impugning the same, present quash petition is filed with the contentions that both the Courts erred in

arriving said conclusion which is contrary to law and negation of opportunity available to the accused under law. Counter filed in opposing the quash petition by the complainant is that according to the accused, he gave in the year, 2011 blank stamped paper and blank cheque signed by him and those were misused by said Raoplu Narasimha in collusion with the complainant Venkateshan in saying Narasimha, even after discharged not returned the documents and suit already filed by him for recovery of the amount covered by *Appu Patram* pending and the case of the complainant is the cheque and receipt respectively given in the year 2013 and the request of sending the document to the expert in the year 2014-15 cannot be considered and the allegations also far from truth and expert cannot determine the age of the ink in between apart from it is premature to seek the relief before commencement of trial and hence to dismiss the quash petition.

6) Heard both sides and perused the material on record.

7) As can be seen from the record, the evidence in trial not commenced by the time the request to send the document by also called from civil suit, sought by the accused as the complainant not even examined-in-chief. It is after complainant came to witness box for examination, the accused got opportunity to put forth his

defence in this regard, including to bring to the notice of the Court in the evidence being adduced on record by cross-examination of P.W-1 including with suggestions also of any apparent difference in the two writings regarding the signature in *Appupatram*-cum-receipt, allegedly of the year May, 2013 and the cheque allegedly of September, 2013 as per the complainant, in support of the defence of those were blank signed of the year, 2011 that were obtained as security by one Rapolu Narasimha and Rapolu Narasimha and the complainant colluded in misusing the same. Further more, it is for the complainant who filed the suit based on the alleged *appupatram*, from the very complaint averments to support it saying the cheque issued in September, 2013 is in discharge of the debt covered by the *Appupatram* of May, 2013. It is needless to say that, it is for the complainant to examine either on behalf of the complainant or even to ask for examine by Court as a Court witness and if not complainant chosen, the accused also can ask the Court to seek for said Rapolu Narasimha examination as a Court witness with right of cross-examination to him to put forth his defence with such suggestive case also. It is there from only after evidence of the complainant and as a part of defence of the accused he can make a request from material on record to send the alleged cheque and the alleged *appupatram*-cum-receipt where signatures if even that of him, in support of the same ink and the

signatures one and the same and signed on same day and the writings subsequently filled by misuse by complaint in collusion with said Narasimha as part of defence version and it is for the Court to decide at that stage the necessity. It is including to call for (send for) the receipt from civil Court (if not any expert opinion sought for and allowed in the civil Court meantime, to rely on it herein also and vice versa) if not produced by complaint by substituting of certified (unmarked) copy for taking back the original to file in the case as per complainant version of the cheque issued is for the amount covered by the receipt.

8) The trial Court instead so observing as premature, made unnecessary observations, even from the contest of the complainant of premature to decide at this stage to send the documents to expert, before commencement of trial proceedings and even before exhibiting the cheque and receipt on behalf of the complainant. It is also untenable to say natural writing patterns change from few years gap for lower revision Court to say observe, equally not possible to determine apparent difference in ink and writings of the documents with signatures. Thus, the observations made by both Courts below are set aside in toto for no way to influence the mind of the trial Court, nor those come in the way for making such future request by petitioner/accused in the progress of the trial as observed supra.

9) Having regard to the above the petition is allowed to the extent while setting aside the orders of the two Courts below, left open remedy to petitioner accused to make similar request in future; as at this stage but for to observe that the observations of the trial Court as well as lower revision Court are untenable and as it is the premature stage to send the documents to expert, the same are set aside for not coming in the way to make a future request by the petitioner/accused by left open in the progress of trial after complainant's evidence to make a similar request for the trial Court to decide on own merits, as it is the right of the accused also in making a request in support of his valuable defence version, in rebutting the evidence of the complainant to say if the cheque is not issued for any legally enforceable debt or other liability as to under what circumstances it was issued and how it is not legally enforceable debt or liability and in that regard even to ask for sending the documents to expert for the expert to decide and form an opinion to express and from expert opinion and reasons for the Court to arrive conclusion also with reference to other evidence on record and without that, it is premature for the Court even to say expert cannot differentiate the writings of the age of ink without such sending.

Dr. B. SIVA SANKARA RAO, J

02.11.2015

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[\[1\]](#) 2012 (1) LAWS (APH) 53

[\[2\]](#) 2012(3) ALD 755