

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.889 OF 2008

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JUDGMENT:
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This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the order dated 26.04.2008, passed by the IX Additional Chief Metropolitan Magistrate, Hyderabad, in C.C.No.2462 of 2005.

2. The revision petitioner herein is the accused and respondent herein is the complainant in C.C.No.2462 of 2005 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. Petitioner filed CrI.M.P.No.813 of 2008 under Section 45 of the Evidence Act seeking relief of sending Exs.P1 and P2, i.e., pronote and cheque to the handwriting expert to compare the age of ink of signatures of the petitioners on the ground that petitioner never executed the pronote and cheque and the said documents are fabricated and created by the respondent-complainant and the petitioner gave the pronote to one Pratap who is none other than the son-in-law of the respondent-complainant as security, the said Pratap in collusion with the first respondent with malafide intention fabricated the pronote and cheque and filed this false complaint. Therefore, the documents are necessarily be send to the expert for opinion.

4. In the counter filed by the first respondent, it is specifically denied the allegations made by the petitioner and stated that petitioner and his brother have jointly executed a promissory note

in favour of the first respondent on 09.02.2004 for a sum of Rs.7.00 lakhs. In spite of repeated requests, the petitioner and his brother failed to pay the amount and issued the cheque in question towards discharge of the part of the principle amount along with some interest. The petitioner has not produced any evidence that he gave the cheque to one Pratap, who is the son-in-law of petitioner. The respondent also stated that petitioner admitted his signature on both the pronote and the cheque. It is not open now to the petitioner to contend contra to the admitted fact. Therefore, the relief sought by the petitioner to refer the document to any handwriting expert to ascertain the age of the ink of the signatures and witnesses is misconceived and without any basis and finally prayed the Court to dismiss the petition.

5. After considering the pleadings and after hearing both sides, the IX Additional Chief Metropolitan Magistrate, Hyderabad dismissed the petition on 26.04.2008. Aggrieved by the same, the petitioner, who is the accused, filed the present petition.

6. Learned counsel for the petitioner argued that petitioner gave a cheque and pronote as a security to the son-in-law of the first respondent and the same was misused by the first respondent. Further, petitioner admitted his signatures on Exs.P1 and P2, i.e., pronote and cheque and also argued that petitioner is entitled for a fair trial and relied upon the case law in **T.NAGAPPA Vs.**

Y.R.MURALIDHAR^[1] wherein it is held as follows:

“Para.10: However, it is not necessary to have any expert opinion on the question other than the following:

Whether the writing appearing in the said cheque on the front page is written on the same day and time when the said cheque was signed as

‘T.Nagappa’ on the front page as well as on the reverse, or in other words, whether the age of the writing on Ex.P2 on the front page is the same as that of the signature ‘T.Nagappa’ appearing on the front as well as on the reverse of the Cheque Ex.P2?”

7. On the other hand, learned counsel for the respondent vehemently opposed the petition on the ground that after completing the evidence on both sides and when the matter is posted for 313 Cr.P.C. examination, the petitioner filed the present petition before the trial Court only to drag on the matter. Further, petitioner himself has not examined before the trial Court to speak about all these facts, which were mentioned in the revision petition. Therefore, the petition is devoid of merits and the trial Court after considering the same, dismissed the petition filed by the petitioner in CrI.M.P.No.813 of 2008 and the findings of the trial Court needs no interference and prayed the Court to dismiss the petition.

8. Now, the point for determination is --

Whether the petitioner is entitled to set aside the orders passed in CrI.M.P.No.813 of 2008 in C.C.No.2462 of 2005 dated 26.04.2008 on the file of IX Additional Chief Metropolitan Magistrate, Hyderabad, as prayed for?

9. **POINT:**

A perusal of the record shows that the first respondent filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act and during the course of trial, the first respondent examined as P.W.1 and Exs.P1 and P2 were marked. Admittedly, petitioner, who is the accused, has not examined himself and not produced any evidence on his behalf. After closing the evidence, the matter was posted for 313 Cr.P.C. examination. At that stage, the petitioner filed the present petition to send Exs.P1 and P2, i.e.,

pronote and cheque to the handwriting expert to compare the age of the ink of the signatures of the petitioner. Admittedly in the order passed by the trial Court, it is categorically stated that the signatures were admitted by the petitioner on Exs.P1 and P2. Further, the petitioner has not put forth his claim by way of any oral evidence. The trial Court after considering the fact that petitioner admitted his signatures on Exs.P1 and P2, rightly held that sending Exs.P1 and P2 for expert's opinion is not necessary. The contention of the petitioner that he gave Exs.P1 and P2 as a security to one Pratap, who is the son-in-law of the first respondent is not proved by placing any evidence before the trial Court as the petitioner admitted his signatures on Exs.P1 and P2 and in the absence of any evidence by the petitioner, the trial Court rightly dismissed the petition. The case law (referred supra) relied upon by the petitioner is not relevant to the facts of the present case. Further, there is no dispute about the proposition of law laid in that case and facts and circumstances of the present case and evidence on record is different than the case relied by the petitioner. Therefore, the petitioner has not made out any case to interfere with the order passed by the trial Court in CrI.M.P.No.813 of 2008 in C.C.No.2462 of 2005 on the file of IX Additional Chief Metropolitan Magistrate, Hyderabad.

10. Hence, the Criminal Revision Case is dismissed. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 13.03.2015

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[\[1\]](#) 2008(1) DecisionsToday(SC)279