

HON'BLE SMT. JUSTICE ANIS

CRIMINAL REVISION CASE No. 1245 OF 2010

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ORDER:

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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/complainant challenging the order dated 11.06.2010, passed by the learned VI Additional Judicial First Class Magistrate, Warangal, in CrI.M.P. No.958 of 2010 in C.C.No.622 of 2008, whereunder and whereby the petition filed by the

1st respondent/accused to send three receipts with admitted signatures of the revision petitioner/complainant to the handwriting expert for comparison, was allowed.

2. The revision petitioner herein is the complainant and the 1st respondent herein is the accused before the

VI Additional Judicial First Class Magistrate, Warangal in C.C. No.622 of 2008. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed before the trial Court.

3. The case of the complainant in brief is that the accused approached him and requested to arrange a sum of Rs.50,000/- for his domestic necessities. Accordingly, the complainant has paid an amount of Rs.50,000/- on 01.03.2005 to the accused who in turn executed a promissory note. Subsequently, when the complainant demanded for repayment, the accused issued a cheque for Rs.50,000/-. When the said cheque was presented, the same was returned unpaid due to insufficient funds. As such, the complainant filed a criminal case in C.C.No.622 of 2008 against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act').

4. During pendency of the criminal case before the trial Court, the accused filed CrI.M.P. No.958 of 2010 under Section 45 of the Indian Evidence Act, 1872 to send three receipts alleged to have issued by the complainant in token of receipt of loan amount, for comparison and opinion of the handwriting expert.

5. On 11.06.2010, the above Criminal M.P. was allowed by the learned Magistrate by directing the complainant to furnish his signatures in open Court and other writings made by him in normal course so as to send the same to FSL.

6. Aggrieved by the order, dated 11.06.2010, passed by the learned Magistrate in CrI.M.P.No.958 of 2010, the complainant filed the present revision case.

7. The learned counsel for the revision petitioner/ complainant argued that the alleged three receipts now sought to be sent to the handwriting expert were not even marked as exhibits, therefore they cannot be considered as documents, and therefore, sending those receipts to the handwriting expert is illegal and on that ground alone the impugned order is liable to be set aside. It is also argued that at the time of framing of the charge, the accused denied the transaction and not averred anything about the three receipts alleged to have been issued by the complainant after receiving Rs.1,23,065/- on three occasions, therefore the said three receipts are invented for the purpose of the case and the trial Court without verifying the same, erroneously allowed the petition. It is also argued that the evidence of PW1 was closed and at that stage the present application was filed by the accused without producing any oral evidence. It is also argued that the accused got a right to rebut the presumption under Sections 118 and 119 of the N.I. Act at any time. It is also argued that the accused has not produced any oral evidence on his behalf and examination under Section

313 Cr.P.C. is also not conducted, and in the said circumstances, allowing the impugned petition filed by the accused is not tenable. It is also argued that the complainant filed a suit in O.S.No.130 of 2008 on the file of the

II Additional Junior Civil Judge, Warangal and in that suit, the accused filed a Written Statement wherein he did not plead about the three receipts, and finally, prayed the Court to allow the revision case by setting aside the impugned order of the trial Court.

8. On the other hand, the learned counsel for the

1st respondent/accused argued that the accused already paid the amount to the complainant and when the complainant denied the issuing of three receipts to the accused in his cross-examination, the accused filed the impugned petition

and the learned Magistrate after considering all the facts, allowed the petition for sending the receipts to the handwriting expert for comparison with the admitted handwritings and signatures of the complainant and that order needs no interference of this Court.

In order to support his contention, the learned counsel relied on a case-law reported in *Janachaitanya Housing Ltd., Hyderabad Vs. Divya Financiers, Guntur*, wherein the Division Bench of this Court held at Paras 3, 14 and 16 as follows:

“3. Before we proceed to answer the reference, we must say the exercise of revisional jurisdiction under Article 227 for revising the order impugned is uncalled for at this stage, since the order if allowed to stand will not attain finality, and the learned trial Judge in his discretion, may accept the expert's evidence or may not accept the same. Further, if the trial court decides the issue only on the basis of the expert evidence, the same is capable of correction in appeal, if any, preferred by the aggrieved party. In the absence of any prejudice or manifest injustice would be done to the parties revision itself cannot be entertained as the same will not fall under the exceptions carved out by the Supreme Court in *Surya Dev Rao v. Ram Chander Rao*, 2003(5) ALD 36 (SC) = (2003) 6 SCC 675.

14. In view of the same, we are of the opinion that the court cannot lay down any hard-and-fast rules controlling the discretion of the court to send the disputed documents/writings for the opinion of the expert or to examine him in support of such opinion. On sending the document to handwriting expert and on receiving report, parties, on showing sufficient cause, may call upon the court to permit them to examine hand-writing expert or any witness in support or rebut the said opinion.

16. 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."

and, finally argued to dismiss the revision case.

9. Now, the point for determination is –

Whether the revision petitioner/complainant is entitled to set aside the order, dated 11.06.2010, passed by the VI Additional Judicial First Class Magistrate, Warangal in CrI.M.P.No.958 of 2010 in C.C.No.622 of 2008 as prayed for?

10. **Point:**

A perusal of the record shows that the complainant filed a private complaint under Section 138 of N.I. Act against the accused and it is numbered as C.C.No.622 of 2008. The accused was examined under Section 251 Cr.P.C. wherein he denied about the transaction of loan and execution of the promissory note as well cheque in favour of the complainant. The complainant was examined as PW1 and in the cross-examination, he denied about the execution of three receipts dated 10.09.2007, 14.10.2007 and 21.12.2007 for a sum of Rs.30,000/-, Rs.18,065/- and Rs.75,000/- respectively. At that point of time, the impugned petition i.e. CrI.M.P.No.958 of 2010 was filed by the accused to send the said three receipts with admitted signatures of the complainant to the handwriting expert for comparison and the said petition was allowed by the learned Magistrate on 11.06.2010 on the ground that the accused can be given an opportunity to prove his innocence.

11. Admittedly, the accused has not produced any evidence so far in C.C.No.622 of 2008. Even after the evidence of PW1, it is not known whether the complainant's side evidence has been closed and the matter is posted for Section 313 Cr.P.C. examination. If really, the accused does not want to give evidence, he should have been waited till the completion of the examination under Section 313 Cr.P.C. and filed the documents into the Court. Till this day, the said three receipts are not part of the record and they are not marked either by the complainant or the accused. When the documents are not part of record, question of sending those documents to the opinion of the handwriting expert does not arise and even if it is made, it is improper, as such the petition filed for sending the three receipts to the opinion of the expert is premature and it is liable to be dismissed. Further, the accused got a right to rebut the presumption under Sections 118 and 119 of the N.I. Act at any time and the case-law relied on by the accused is not applicable to the facts of the present case. Accordingly, the point is answered in favour of the revision petition/complainant against the

1st respondent/ accused.

12. Accordingly, the Criminal Revision Case is allowed, setting aside the impugned order dated 11.06.2010 passed in CrI.M.P.No.958 of 2010 in

C.C.No.622 of 2008. However, the 1st respondent/accused is at liberty to file a fresh petition for sending the said three receipts to the expert opinion after making them part of the record, in accordance with law.

13. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 01.04.2015

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