

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.1709 of 2013

ORDER:-

The revision is directed against the orders passed in Crl.M.P.No.308 of 2012 in Crl.Appeal No.96 of 2012, dated 01-08-2013 on the file the Additional Sessions Judge, Khammam, by and under which the learned Judge has allowed the petition filed under Section 45 of the Evidence Act to refer the promissory note to an handwriting expert.

2. Facts in brief are as under:-

The revision petitioner is the complainant and the 1st respondent is the respondent/accused in C.C.No.247 of 2010 (old C.C.No.71 of 2009) on the file of the Judicial Magistrate of First Class, Khammam. It is a private complaint filed under Section 138 of the Negotiable Instruments Act claiming that the respondent/accused has taken certain amounts and to discharge thereof, issued two cheques which are Exs.P.1 and P.2, dated 17-07-2008 and 21-07-2008 and also executed promissory note Ex.P.8, dated 16-07-2007. The respondent/accused filed Crl.M.P.No.2741 of 2010 for sending the promissory note Ex.P.8 to an handwriting expert. Vide orders, dated 22-07-2011, the said petition was dismissed observing that it is open to the Court to compare the admitted and disputed signatures on the records. During the course of trial, evidence was let-in and after considering the same, by Judgment dated 12-10-2012 the learned III-Additional Judicial Magistrate of First Class, Khammam, found the case of the complainant as having proved and accordingly convicted the respondent/accused to simple imprisonment for a period of two years and also to pay a compensation of Rs.2 lacs.

3. Aggrieved by the said conviction and sentence, the respondent/accused preferred Criminal Appeal No.96 of 2012 on the file of the Special Sessions Judge for trial of Cases under SCs and STs (POA) Act-cum-Additional Sessions Judge, at Khammam. Pending the appeal, the appellant/accused filed Crl.M.P.No.308 of 2012, under Section 45 of the Indian Evidence Act to refer the promissory note

Ex.P.8 to an handwriting expert. Originally, by order dated 11-01-2013 the said petition was allowed but on revision by the complainant, in CrI.R.C.No.241 of 2013 by Order dated 17-06-2013, the High Court having found that the order of the Sessions Judge being a non-speaking order, the case was remitted to the learned Judge to dispose of the same afresh on merits with a reasoned order

4. Subsequently, the impugned order, dated 01-08-2013 came to be passed by the learned Judge directing that the document be referred to an handwriting expert.

5. The contention of the revision petitioner/complainant is that the appellant/accused has already taken steps to get the disputed document sent to an expert during the course of trial before the Judicial Magistrate of First Class and the learned Magistrate has dismissed the said petition and that became final and the trial proceeded. During the course of appeal, the self-same request is made by the appellant/accused which was allowed. The learned Counsel submits that the appellant/accused cannot take recourse to the same remedy he having been unsuccessful during trial since it amounts to constructive *res judicata*.

6. On the other hand, learned Counsel appearing for the respondent/appellant/accused submits that it is no doubt true that the learned Magistrate during the course of trial has dismissed the petition filed under Section 45 of the Evidence Act with an observation that the disputed signatures on the document can be compared by the Court, but, however, during the course of final disposal such an exercise has not been taken up and hence the present petition has been filed. Learned Counsel submits that the impugned order do not suffer from any irregularity or illegality warranting any interference.

7. The point that arises for consideration is as to whether order in CrI.M.P.No.308 of 2012 passed by the learned Additional Sessions Judge, Khammam suffers from any material illegality or irregularity warranting interference by the revisional Court?

8. **Point:-** The controversy in the case revolves round the two cheques Ex.P.1 and Ex.P.2 and the promissory note Ex.P.8. The contention of the accused is that the signature on Ex.P.8 – promissory note does not belong to him and that it is forged and once the promissory note Ex.P.8 fails, the cheques Ex.P.1 and Ex.P.2 which are admittedly issued by the accused cannot be enforced since there is no legally enforceable debt. The signature on the two cheques Exs.P.1 and P.2 are not denied, however, signature on promissory note – Ex.P.8 is disputed. The issue is as to

whether when once a Court takes a view that there is no need for referring a document to an handwriting expert, can the same issue be re-agitated in a different forum may be in an appeal filed against the Judgment of the trial Court. As already stated, the appellant/accused has filed CrI.M.P.No.2741 of 2010 in the Court of the III-Additional Judicial Magistrate of First Class, Khammam, where the trial was pending. By a reasoned order, the Magistrate has dismissed the petition holding that it is not necessary to send the promissory note to the expert for the reason that the signatures on the cheques Exs.P.1 and P.2 are admitted and the Court can compare the admitted signatures of the accused on the cheques with the disputed signature on the promissory note. The accused was convicted and sentenced by the III-Additional Judicial Magistrate of First Class, Khammam, after full-fledged trial wherein PWs.1, 2, D.W.1 and C.W.1 were examined and Exs.P.1 to P.9 and D.1 and D.2 were marked. Aggrieved by the said conviction and sentence, the appellant/accused has preferred Criminal Appeal No.96 of 2012. For the self-same relief CrI.M.P.No.308 of 2012 is filed with a request to send promissory note – Ex.P.8 to an handwriting expert. The learned Sessions Judge has allowed the said petition .

9. Since the previous request by the accused to send the document to an expert was dismissed on merits and since that became final, it is not open to the respondent/accused to once again seek the same relief from the appellate Court. In this connection, learned Counsel appearing for the petitioner relied upon a decision of our High Court reported in **VAJJALA SREE RAMA MURTHY v. TADEPALLI NARAYANA MURTHY (AIR 2006 A.P., 315)** wherein it is held that when the earlier application for sending promissory note to expert was dismissed, subsequent application for permission to send the said promissory note to an expert is barred by constructive *res judicata*.

10. The contention of the learned Counsel is that the need for filing the second application arose since the trial Court has failed to compare the admitted and disputed signatures under Section 73 of the Evidence Act as was observed during the pendency of the trial. That is a matter which has to be adjudicated by the appellate Court at the time of hearing the appeal but whether the learned Magistrate has undertaken the exercise of comparison or not by itself cannot be a ground to once again seek the remedy of referring the same document to an handwriting expert. In view of the above, upon considering the material on record, it is noticed

that the impugned order suffers from material irregularity warranting interference. The same cannot be sustained in view of the foregoing discussion. The Point is answered accordingly.

11. In the result, the Criminal Revision Case is allowed setting aside the order, dated 01-08-2013, passed by the learned Special Sessions Judge for trial of Cases under SCs and STs (POA) Act-cum-Additional Sessions Judge, at Khammam, in Crl.M.P.No.308 of 2012 in Criminal Appeal No.96 of 2012.

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

M.S.K.Jaiswal, J

18th June, 2015

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