**HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**CRIMINAL REVISION CASE No.107 OF 2014**

**ORDER:**

The present Criminal Revision is filed under Sections 397 and 401 Cr.P.C., questioning the order dated 10.01.2014 passed in Crl.M.P. No.2917 of 2013 in C.C. No.207 of 2013 on the file of the XI Special Magistrate, Secunderabad at Hyderabad, wherein and whereunder an application filed under Section 45 of the Indian Evidence Act for sending Ex.P-1 (D.P. Note) to the handwriting expert for verification and report about signature, was rejected.

The facts, which lead to filing of the present application are as under :

The respondent/complainant filed a private complaint against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act. The said complaint was taken on file as C.C. No.207 of 2013 on the file of the XI Special Magistrate, Secunderabad at Hyderabad. The allegations in the complaint are to the effect that out of acquaintance the accused borrowed an amount of Rs.1,00,000/- from the complainant as hand-loan agreeing to repay the same on demand. As a collateral security he is alleged to have executed a promissory note in favour of the complainant. Pursuant to repeated demands made by the complainant, the accused issued a cheque dated 11.09.2011 bearing No.001934 for a sum of Rs.1,00,000/- drawn on ICICI Bank Ltd., Sikh Village Branch, which when presented was returned due to insufficiency of funds on 14.09.2011. After complying with all the statutory requirements, the present complaint came to be filed. The said case was taken on file as C.C. No.207 of 2013 and summons were issued to the accused. During the course of trial, the present application under Section 45 of the Indian Evidence Act came to be filed and the same was dismissed. Aggrieved by the same, the present Revision is filed.

The learned counsel for the petitioner mainly submits that sending of Ex.P-1-D.P. Note is just and necessary to find out the truth of the case. In view of the suggestion given to P.W.1 he submits that it would be appropriate to send the document to the handwriting expert.

On the other hand, the learned counsel for the respondent opposed the application contending that there are no variations in signature on any of the document signed by the accused and these proceedings are initiated only with a view to delay the proceedings.

In order to appreciate the rival contentions, it would be necessary to refer to the evidence of P.W.1 and also to the material available on record.

The complainant was examined as P.W.1. Her evidence in the form of affidavit was filed on 08.07.2013. Thereafter, she was cross-examined on 31.10.2013. The relevant portion of the cross-examination is as under :

“It is true that I have not state4d in the Ex.P-6 about issuing Ex.P-3 to the accused earlier. It is true that I did not mention in Ex.P-6 that the accused has executed a D.P. note for the said amount, but it is stated in Ex.P-3. After the death of my husband, I got his insurance benefits and from that amount, I lent this amount to the accused. My husband expired in the year 2006. It is true that I did not mention in Ex.P-3 and P-6 or anywhere that I lent this amount from out of my late husband’s insurance amount to the accused. I deposited the insurance amount in my Bank and I lent the amount to the accused in the year 2009, taking from the Bank. I also get agricultural income about 40,000/- per annum. Thus, I lent this amount from those two sources, which is not stated anywhere in this case. I also withdrawn amount from the Bank and some amount with me, I lent to him. I have withdrawn the amount on that day lending the amount to the accused.”

To a suggestion that the complainant forged the signature on Ex.P-1 was denied by her. Apart from that it has been elicited from P.W.1 that Ex.P-2-cheque was given to her by the accused on 11.09.2011, which was presented in the same month, was dishonoured. A reading of cross-examination of P.W.1 would clearly show that the complainant got insurance benefits of her husband and lent the said amount to the accused. Having extracted the above answers, the accused filed an application under Section 311 Cr.P.C. to recall P.W.1 for re-cross-examination on some points vide Crl.M.P.No.2474 of 2013. But the same was rejected after hearing both sides. The said order has become final and the same was not challenged before the Revisional Court. It is to be noted that in the said application, the ground of alleged forgery of signature of the accused by the complainant in Ex.P-1 was never urged. Strenuously nearly 1 ½ year after the dismissal of the application filed under Section 311 Cr.P.C. and when the case is at the stage of defence, the present application came to be filed alleging forgery by the complainant. The question is “Whether in the said circumstance it is just and reasonable to send the document to an expert keeping in view the answers that are elicited during the cross examination of P.W.1 more particularly with reference to execution of D.P.Note?”

I n **M.Pentaiah v. B.Parameshwar** this Court while considering the scope of Sections 45 and 73 of the Indian Evidence Act, held that it is not necessary to send every document for opinion on mere asking of the parties. The Court held that Section 73 of the Act empowers the Court to form it’s own opinion on comparison of signature or thumb impression.

From the above judgment, it is clear that the power of the Court to compare the signatures or the writings on the disputed documents with the admitted documents is not totally excluded

In **Lalit Popli v. Canara Bank** the Apex Court while dealing with Sections 45, 47 and 73 of the Evidence Act held that Section 45 provides that expert opinions are relevant facts. It is a general rule that the opinion of the witness possessing peculiar skills is admissible. Under Sections 45 and 47 of the Evidence Act, Court has to take a view on the opinion of others where as under Section 73 of the Act the Court by its own comparison of writings can form its opinion. Under Sections 45 and 47 of the Evidence Act, the evidence is an opinion. In the former case it is by a scientific comparison and in the latter case on the basis of familiarity resulting from frequent observations and experience. Irrespective of the opinion of the handwriting expert the Court can compare the admitted writings and disputed writings and come to its own independent conclusion. Such exercise of comparison is permissible under Section 73 of the Evidence Act. After analyzing the authorities on subject, the Apex Court held that it is for the Court to decide whether such uncorroborated evidence can be accepted or not.

From the judgments referred to above, it is clear that sending of a document to the handwriting expert cannot be a matter of course. It all depends as to the circumstances under which the application is filed, the genuinity of the request made and whether really it requires consideration by a handwriting expert. In the instant case, the answers which are elicited by the accused from P.W.1 are quite inconsistent.

Though the chief-examination of P.W.1 was done on 08.07.2013 no explanation is forthcoming as to why plea of forgery was not taken in the application filed immediately thereafter for recall of P.W.1 under Section 311 Cr.P.C. Apart from that the order rejecting the request made under Section 311 Cr.P.C. was never challenged. About 1 ½ year later the present application came to be filed. The Court on comparison of signature on Ex.P-1 with the admitted signatures of the accused on the petition, cheque and also under Section 251 Cr.P.C. examination, found that the signatures are one and the same and there is no difference in signature in any of these documents with the disputed documents. Obviously it appears to be a case where the accused wants to delay the proceedings on one pretext or the other. It is to be noted that the accused did not dispute his signature on the cheque. His dispute is only with regard to execution of promissory note at the time of taking the loan amount. Though a suggestion was given to P.W.1 that he did not execute the said promissory note, but as held by this Court in **M.Pentaiah's case (first supra)** every document need not send to an Expert on mere asking of parties. The Court has to see whether the circumstances under which the application was filed, the genuinity of the said request and also the time when such an application was made. Having regard to the findings given earlier, the request of the petitioner is rejected.

Accordingly, the Criminal Revision is dismissed.

As a sequel to it, miscellaneous petitions pending if any, in this Revision shall stand closed.

**C. PRAVEEN KUMAR, J**

Date: 22.04.2015

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