

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

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**CRIMINAL REVISION CASE No.2425 of 2013**

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**ORDER:**

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The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C., aggrieved by the order dated 30.10.2013 passed in CrI.M.P.No.258 of 2013 in CrI.A.No.63 of 2012, wherein and whereunder an application filed under Section 45 of Indian Evidence Act was rejected.

The facts in issue are as under:

The first respondent herein filed a private complaint against the petitioner for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Vide judgment dated 19.06.2012, the learned Special Judicial Magistrate of First Class (Mobile Court), Adilabad, convicted the petitioner/accused and sentenced him to undergo simple imprisonment for a period of one year and to pay compensation of Rs.5,25,000/- to the complainant. Aggrieved by the same, the petitioner/accused preferred CrI.A.No.63 of 2012 before the Court of I Additional Sessions Judge. Pending appeal, the petitioner filed CrI.M.P.No.258 of 2013 to refer Ex.P2 to the hand writing expert to give his opinion in respect of the age of the writing and signature on Ex.P2. The said application was dismissed on 30.10.2013. Challenging the same, the present revision is filed.

Learned counsel for the petitioner submits that the signature on the cheque is not that of the accused and the contents of the cheque were written long prior to the date of offence. In view of the above, he submits that it is absolutely necessary to send these documents to hand writing expert to find out the age of the writing and signature on the cheque.

Learned counsel for the first respondent opposed the same contending

that there is no laboratory in this connection to find out the age of the ink, writing and signature on Ex.P2. Even otherwise, he submits that the plea taken by the petitioner herein was never raised before the trial Court as well as in the grounds of appeal as such he is not entitled to raise such a plea before this Court.

A perusal of the entire material placed before the Court would show that during the trial the accused never disputed the signature on Ex.P2-cheque, which was dishonoured on the ground of "Account closed". The only defence taken by the accused is that he had sufficient amount in his account and Ex.P2 was obtained by the first respondent as a security for providing loan which he repaid, subsequently, the first respondent by taking advantage of the possession of blank signed cheque filled up and managed to get endorsement as "account closed".

As contended by the learned counsel for the first respondent, the petitioner never disputed the signature nor writing on the cheque before the trial Court. Even in the grounds of appeal filed in CrI.A.No.63 of 2012 the petitioner/accused never took the said plea. Nearly a year after filing of the appeal he filed CrI.M.P.No.258 of 2013 under Section 45 of the Indian Evidence Act, for sending the cheque to the handwriting expert as the contents of the cheque and signature on the cheque were made long prior to the date of issuance of cheque.

In ***K.Vairavan vs. Selvaraj*** a learned Single Judge of Madras High Court (Madurai Bench) held as under:

"19. Very recently, the President of Central Forensic Science Laboratory, Hyderabad, Andhra Pradesh State was invited to give a lecture in the Tamil Nadu State Judicial Academy at Chennai on the subject "disputed document". During the course of interaction, a question was posed to him – Is there any expert available for offering opinion regarding the age of the ink used for writing the disputed document? In categorical terms, he informed that there is no such expert available not only in his Laboratory but in any Laboratory throughout the country at present and, therefore, it is not at all possible to offer any opinion regard the age of the ink used in the disputed document. When a specific query was made during interaction to the President as to what had happened to the documents already sent to his Laboratory seeking such opinion,

he said that the said documents were only returned without offering any opinion.

20. Now, in order to ascertain as to whether there is any expert really available in the said laboratory since the request is to send the disputed document to the said laboratory in Hyderabad, this Court through the Registrar called for remarks from the said laboratory in Hyderabad. The Assistant Director and Scientist 'C', Central Forensic Science Laboratory, Hyderabad, has given his remarks through fax message to this Court vide ref. CFSL (H) DOC/MISC/2012-2013, wherein he has stated as follows:

“This is to submit that there is no validated method, this laboratory does not undertake the examination for determining the relative/absolute age of the ink of the writings/signatures.

From the above fax message from the Central Forensic Science Laboratory, Hyderabad, it is crystal clear that there is no expert available in the said Laboratory to offer any opinion regarding the age of the ink.

In respect of age of ink though there are scientific method available in India, there is neither such scientific expert available nor equipment available. It is because of these reasons, make it clear that in future, if any expert emerges and equipments are also made available, then, after identifying him, the Court may forward the disputes documents to him for opinion. Until such time, the document cannot be sent anywhere for the purpose of getting opinion regarding the age of the ink used for writing the disputed document.”

From the judgment of the Madras High Court, it is clear that sending of document to hand writing expert to know the age of the ink is a futile exercise as there is no equipment available in India to know the age of the ink.

In view of the judgment referred to above and having regard to the facts and circumstances of the case, I see no reason to interfere with the order passed by the learned Magistrate.

Accordingly, the Criminal Revision Case is allowed.

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

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**JUSTICE C. PRAVEEN KUMAR**

19.03.2015

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