

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

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CRIMINAL PETITION NO. 16447 OF 2014

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Between:

G.Ramesh Kumar

_____. Petitioner

and

State of Telangana
Rep. by its Public Prosecutor
High Court
Hyderabad, and another

.. Respondents

DATE OF ORDER PRONOUNCED: 20.07.2015

SUBMITTED FOR APPROVAL:

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.16447 OF 2014

ORDER:

This is a Criminal Petition filed under Section 482 of the
Code of Criminal Procedure, 1973 (for short, 'the Code') by the

petitioner/accused requesting to set aside the orders passed in Crl.R.P.No.22 of 2014 dated 12.11.2014 passed by the learned V Additional District Judge, R.R. District, L.B.Nagar.

2. The petitioner is the accused in C.C. No.100 of 2012 on the file of V Special Magistrate, Hasthinapuram. The second respondent is the complainant therein. It was a private complaint case for the dishonour of Ex.P.1 cheque for Rs.9,00,000/- said to have been issued by the accused in favour of the complainant for the offence punishable under Section 138 of the Negotiable Instruments Act. In the course of trial, besides the complainant as P.W.1 the accused got examined the husband of the complainant as D.W.1. On behalf of the complainant, as can be seen from the record Exs.P.1 to P.6, if not more, were the documents marked, of which Ex.P.6 is a document on Rs.100/- non-judicial stamp paper. The claim of P.W.1-complainant is that the accused borrowed the amount and executed the document and issued a cheque, which is for the legally enforceable debt. In the cross-examination of P.W.1, undisputedly P.W.1 deposed that the accused executed Ex.P.6 document in her favour in his own handwriting and denied the suggestion of he did not execute the contents of Ex.P.6 and is deposing falsehood and also stated that she has no objection for sending Ex.P.6 to handwriting expert for opinion. So far as D.W.1, husband of the complainant, whose chief-examination on record not tendered for cross-examination by the accused and thereby closed. The chief-examination was in the year 2002 D.W.1 paid Rs.50,000/- to the accused as hand loan and he promised to repay and at that time he obtained a signed blank cheque and also one signed bond paper unfilled and the accused promised to repay after he receive the arrears and meantime his wife taken away the

said cheque and the paper and in his absence filed a false case. The accused filed an application for cross-examination of D.W.1 on commission stating he was suffering from ill-health, that was as can be seen from the material on record ended in dismissal before the trial Court for the laches of the accused/petitioner in non-mention of the provision of law.

3. Section 284 Cr.P.C. (correspondent to old Section 503 with changes) enables the Court where it appears to it of examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without delay or expense or inconvenience, the Court may dispense with such attendance and may issue commission for examination of the witness, and when issuing a commission for the examination of witness for prosecution, the Court may direct such amount as the Court considers reasonable to meet the expenses of the accused including the pleader's fee to be paid by prosecution. This application is not in relation to that application for examination of commission negated, but for to say it is in the factual scenario supra the accused/petitioner filed CrI.M.P.No.2068/2013 requesting the learned magistrate to refer Ex.P.1 and Ex.P.6 to the handwriting expert to know whether the disputed writings on these documents are that of him as deposed by complainant/P.W.1 or not that of him as suggesting by him to P.W.1.

4. The defence of the accused, one thing certain there from, is that the so called blank cheque and the blank non-judicial stamp paper with the signatures issued by him, however, not to the complainant but to her husband and he did not borrow Rs.9 lakhs but for Rs.50,000/-. In fact, as laid down by the Apex Court in

C.Antony v. K.G.Raghavan Nair^[1] even in such defence the

burden is on the complainant to cross-examine. If not, when the accused choose to examine the complainant, cannot have any objection. Further, that witness is when necessary, it is even for the Court to permit examination of such witness for the effective disposal of the lis in the factual scenario. There is a truth of ill-health and inability of the so-called D.W.1 to come to witness box to issue commission and thus, further needless to discuss herein.

5. In this background, when that is the defence of the accused and P.W.1 positively says as if the so-called debt covered by Ex.P.6-non-judicial stamp document executed by the accused in his own handwriting even it is suggested by accused to PW1 of those is a false version and but for signature on blank stamp paper the content specifically cause filled falsely, the writing and the contents are not that of him, the ends of justice required to permit the sending of the documents to handwriting expert as that is part of the defence of the accused.

6. In fact, the Apex Court in **T.Nagappa v. Y.R.Muralidhar and another**^[2] laid down the same principle referred supra. Apart from it, in **Kalyani Baskar v. M.S.Sampoornam**^[3] it was held that in a case of a dishonoured cheque, prayer of the accused to send for opinion of handwriting expert to ascertain genuineness of signature, rejection of the same by magistrate is improper unless there is a finding of said object in seeking by the accused is vexatious to delay, for the reason accused is entitled to rebut the case of the complainant where cheque on which complainant relied upon for initiating criminal proceedings, which opportunity to rebut the evidence after sending to expert opinion and on its receiving cannot ordinarily be denied. In fact, what the learned magistrate

observed after contest by complainant the said application of the accused to send Ex.P.1 and Ex.P.6 to handwriting expert, is that D.W.1 did not come to face cross-examination before the Court, thereby his evidence is treated with no value in chief and it is thereby not open to seek the relief at the belated stage of the matter coming for defence arguments that too when the signatures on Ex.P.1 and Ex.P.6 not in dispute that of the accused, but for the contents therein even to send to handwriting expert. The lower revisional Court (IV Additional District Judge) observed that it was laid down by the High Court in 2012 (1) Laws (APH) 53 between **Gowri shankar v. J.L.Babu & another** the Court can compare under Section 73 of the Evidence Act, the disputed signatures with admitted signatures without even necessitate to send for handwriting expert opinion and handwriting expert opinion is not even a conclusive proof but for one of the piece of evidence, and the burden lies on the complainant to prove Ex.P.1 and Ex.P.6 were issued by the accused for legal liability. PW.1 deposed long back and was cross-examined by the accused where she has stated no objection to send the documents to expert on 23.04.2013 and without availing that remedy immediately the petition to send the documents to expert sought belatedly in the year 2014 at the arguments stage, thereby held no reason to interfere with the dismissal order of the lower Court. It is further observed that the lower Court ought to have *suo moto* issued bailable warrant to D.W.1 for cross-examination by the complainant and for his non-appearance. No doubt his evidence was eschewed and thereby it is left open to the accused to take proper steps to set aside the order eschewing DW1 evidence to submit for cross-examination. It is now as referred supra the said order of the learned Sessions Judge in revision impugning.

7. Even the learned Sessions Judge in the revision from what is discussed supra did not properly advert to the requirement of sending the documents to the handwriting expert, more particularly, from the deposition by P.W.1 as if Ex.P.6 and Ex.P.1 contents also in the handwriting of accused and it is for the borrowal of Rs.9 lakhs, in contra to the defence version of he borrowed from the complainant's husband D.W.1 whose evidence treated as no value as referred supra already, only Rs.50,000/- and issued blank cheque and blank non-judicial stamp paper that were misused by the complainant-PW1 by cause filled. Hence, sending of the documents to the handwriting expert are essential. Needless to say the two expressions of the Apex Court when also laid down the same as it is to serve the limited area of defence of the accused to rebut the evidence of the complainant in the cases punishable under Section 138 of the Negotiable Instruments Act from the burden of the accused under the *reverse onus clause* and from presumptions under Sections 139 and 118 of the Negotiable Instruments Act, the dismissal of the application to send to the handwriting expert Ex.P.1 and Ex.P.6 by the trial Court and its confirmation in revision are unsustainable in saying it was filed at the time of arguments stage. In fact, as referred supra D.W.1 chief examination on record that was for his not coming to face cross-examination treated with no value, no doubt even by dismissing the application to issue commission for his examination by saying is not in a position to attend, leave about that part of the burden is in fact as per **Antony's** case (1 Supra) lies on the complainant.

8. Hence, the impugned order of the trial Court in Criminal M.P.No.2068/2013 in C.C. No.100/2012 and the consequential

order of the learned Sessions Judge in Crl.R.P.No.22 of 2014 in dismissing the Revision are set aside by allowing the Criminal Petition directing the petitioner/accused to deposit, before the trial Court within one week from the date of receipt of a copy of this order, a sum of Rs.10,000/- (Rupees ten thousand only) to meet the handwriting expert opinion expenses, and directing the trial Court to obtain the specimen handwriting and signatures of the accused and also the admitted handwriting and signatures available on record, and send the same along with Ex.P.1 and Ex.P.6 to the handwriting expert to compare and give opinion with reference to the disputed writings on Ex.P.1 and Ex.P.6 and thereafter to proceed further with the matter as expeditiously as possible as the case is of the year 2012.

9. Accordingly, the Criminal Petition is allowed with the above directions.

10. Miscellaneous petitions pending, if any, in the Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 20.07.2015

MVA

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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CRIMINAL PETITION No.16447 OF 2014

Date: 20.07.2015

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[\[1\]](#) 2003 (1) SCC-1=AIR 2003 SC 182

[\[2\]](#) LAWS (SC) 2008-4-109

[3] LAWS (SC) 2006-12-1 = (2007) 2 SCC 258