

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.No.5450 of 2015

ORDER :

The petitioner is the accused in C.C.No.95 of 2013 on the file of the Special Judicial First Class Magistrate, Eluru which is outcome of a private complaint filed by the 2nd respondent herein for the offence under Section 138 of the Negotiable Instruments Act(for short, 'the Act') and the learned Magistrate after taking cognizance for the offence supra on appearance of the petitioner/accused and after examination under Section 251 of Cr.P.C. the accused was put to trial and as can be seen, 4 witnesses were examined on behalf of the complainant and 313 Cr.P.C. examination of the accused also completed and it is at that stage, the accused sought for time to adduce defence evidence by filing application in Crl.M.P.No.6451 of 2014 under Section 45 of the Indian Evidence Act to send the Ex.P.1 cheque, Ex.P.2 promissory note to handwriting Expert for comparison of the signatures contained therein with admitted signatures of the accused and also with the signatures on 313Cr.P.C. examination proceedings saying those are forged and not signed by him. The trial Court after hearing both sides by the impugned order, dismissed the application.

2. The order of the learned Magistrate dated 01.12.2014 reads that though it is contested by the petitioner/accused to send the documents Exs.P.1 and P.2 to handwriting expert for comparison of disputed signatures therein with specimen signatures which are appearing in 313 of Cr.P.C. examination questionnaire of the accused, resisting the same the complainant filed counter stating that there is no such question put to P.W.3 Senior Manager of Canara Bank as to the signature on the cheque is forged one though said Senior Manager was testified with regard to the drawing of the cheque by the accused and there is no suggestion to P.w.4 one of the attestors of the Ex.P.2 promissory note to say the same is forged or fabricated and it is delay tactics in filing the application instead of adducing defence evidence, in asking to send the cheque and pronote to Expert and from perusal of the rival submissions supra trial Court held that the case was commenced on 04.03.2013 and the accused did not take any steps at the earliest to get the disputed signatures compared by

handwriting Expert and the 313 Cr.P.C. examination was completed on 17.11.2014 and for defence evidence it is posted to 21.11.2014 on which day only the petition to send the document to Expert filed and as the application is filed at the belated stage without availing earliest opportunity, held the application cannot be sustained and the decision relied by the accused in **Velaga Siva Rama Krishna Vs. Velaga Veera Bhadrarao** has no application to the present facts and further held that the application is only to procrastinate the matter for some time if possible.

3. The matter in fact carried in revision (Crl.R.C.No.88 of 2014) before the learned VII Additional District and Sessions Judge (Family Court) Eluru and the learned Judge dismissed the revision by confirming the order saying that there is no dispute that the accused entitled to avail trial as part of fundamental right under Article 21 of the Constitution as laid down in **G.Someshwar Rao Vs. Samineni Nageswar Rao**, in which the Apex Court held as each application filed by the accused for comparison of his signature on a disputed document with his admitted signature depends on its own merits, but in the case on hand when the accused set his defence as the signatures on cheque and promissory note do not belong to him and are forged, he should have taken steps for asking to send the documents to handwriting expert for comparison at the earliest point of time but by not doing so asking at the belated stage and even with no suggestion put to P.W.4 attestor of Ex.P.2 promissory note of signature is forged one or does not belong to him and as held in **R.Ramanjaneyulu Vs. State of Andhra Pradesh**(supra) in following earlier decision of **Nalnaru Shanmugham Vs. Nalnaru Narayanaiah** held the petition to send the document to Expert to be filed at the earliest not belatedly to consider thereby and further held the Court Expert opinion is not final but the Court also got power under Section 73 of the Indian Evidence Act to compare the disputed signatures with admitted signatures on record and held that there is nothing to interfere with the impugned order.

4. Heard both sides and perused the material on record.

5. The contentions in the petition impugning the said order of the learned Magistrate confirmed in revision are that the Courts below came to wrong conclusion and the bank Manager is not an handwriting Expert to put any

suggestion to him in the limited scope of his evidence of the cheque returned memo is for insufficiency of funds and not examined to prove any signatures and thereby when it is available right of the accused that too after completion of the evidence of the complainant side, when application filed to send the documents to Expert in support of the defence of the signatures are forged, the Courts below should have allowed the application to send the documents to Expert and thereby sought for allowing the application.

6. The revision Court in para-5 referred the expression of the Apex Court in G.Someshwar Rao(supra) of sending a document to Expert from the disputed and genuineness of the signature in the cheque dishonour case is available right of the defence right. In fact, even earlier to it in **Kalyani Bhasker Vs. M.S. Sampurnam**, the Apex Court held that fair trial to mean and include fair and proper opportunities allowed by law to prove innocence of accused to adduce evidence in support of the defence which is available one and denial of that right tantamounts to denial of fair trial under Article 21 of the Constitution of India and in that case for dishonour of cheque in support of the defence of signature on cheque not genuine asked to send the document for Expert opinion and have granted such a request unless considered the object was vexatious or delaying procedures as accused is entitled to rebut any defence case of the complainant and take on which the complainant relied for the criminal prosecution in it accused furnished good material for rebutting and thereby declining to send the document for examination and opinion by Expert sought is deprived of available right of accused by curtailing the opportunity to rebut and it leads to unfair trial.

7. Having regard to the above, when it is not even the case of the Court below that there is no any dispute on the signature of the cheque and pronote by accused either in the cross-examination of P.W.1-the complainant or any of the other witnesses among the P.Ws. 2 to 4 and it is after evidence of the complainant and after 313 of Cr.P.C. examination denying the truth of the incriminating evidence in saying he is innocent and in support of the defence to rebut the presumptions against him and when the accused wants to send the document to Expert, the Courts below went wrong in saying it is belated one. Admittedly defence evidence of the accused arises only after completion of the evidence of the complainant. The documents even required for exhibition during

the complainant's side evidence and at that stage it cannot be asked by the accused to send the documents to Expert stalling complainant's evidence. In fact, the complainant adduced evidence with reference to the documents and after that and after Section 313 Cr.P.C. examination, with no lapse of time, the accused filed the petition. There is no delay in filing the application even from the docket proceedings as referred in the order of the lower Court discussed supra. Thereby both the orders of the Courts below are unsustainable. Further, when it is the valuable right of defence of accused who to rebut complainant's evidence and as part of said defence sought for sending the documents to Expert, for court not an Expert, the dismissal of the petition by negation of such right is unsustainable and perverse.

8. In the result, the Criminal Petition is allowed, by setting aside the orders of both the Courts below viz;Crl.R.P.No.88 of 2014 on the file of the VII Additional District and Sessions Judge (Family Court) Eluru and Crl.M.P.No.6451 of 2014 in C.C.No.95 of 2011 on the file of the Special Judicial First Class Magistrate, Eluru and by directing the learned Magistrate(trial Court) to permit the accused subject to his deposit of Rs.10,000/-(ten thousand rupees only) within one week from the date of receipt of the order towards meeting the Expert charges etc., for sending the documents to Expert and after meeting out of it for the Expert opinion and the charges to refund anything remained to accused, else to claim for any further payment required; in sending after obtaining specimen signature of the accused in open Court, the disputed signatures on Ex.P.1 cheque and Ex.P.2 promissory note respectively along with other admitted signatures on record like in Section 313 of Cr.P.C. Examination record and from request of any or both sides to secure from the bank account wherefrom the cheques shown drawn, the cheques operated by the accused with contemporary relevance to the date of Ex.P.1 cheque of 24.01.2011 and after securing opinion if necessary by examination of the Expert, from the opinion supported by the reasons from the trial to decide on merits. Consequently, miscellaneous petitions, if any pending, in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:03.11.2015

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