

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 21.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

Crl.R.C.No.432 of 2011

and

Crl.M.P.No.1 of 2011

A.Suganthi

... Petitioner

vs.

Sree Mahalakshmi Enterprises,
by its Kartha S.Annamalai,
No.6, V Cross Street,
Vijayaraghavapuram,
Saligramam,
Chennai-600 093

... Respondent

Criminal revision preferred under Sections 397 and 401 Cr.P.C., against the order dated 08.03.2011 passed by the XXIII Metropolitan Magistrate, Chennai, in Crl.M.P.No.1081 of 2011 in C.C.No.1425 of 2006.

For Petitioner : Mr.C.S.Dhanasekaran

For Respondent : Mr.T.Anbazhagan for
Mr.V.Purushothaman

ORDER

This revision is at the instance of the accused in C.C.No.1425 of 2006 as against the dismissal of his Crl.M.P.No.1081 of 2011, which has been filed to send Exs.P1, P2 and P7 for expert opinion.

2. The petitioner/accused is being prosecuted by the respondent in the Court of the learned XXIII Metropolitan Magistrate, Saidapet, for his alleged commission of an offence under Section 138 of the Negotiable Instruments Act. The revision petitioner filed Crl.M.P.No.1694 of 2007 for sending two cheques and a pro-note for expert opinion. On 16.7.2007, the learned Magistrate dismissed it. The accused preferred revision in Crl.R.C.No.1182 of 2007 to this Court. It came to be dismissed for default.

3. The respondent adduced oral evidence and documentary evidence. Prosecution evidence was over. The accused has been examined under Section 313 of Cr.P.C. The case has been posted for defence evidence.

4. At this juncture, the accused filed Crl.M.P.No.1082 of 2011 to send Exs.P1, P2 and P7 for expert opinion. The learned Magistrate dismissed the same holding that he has already exhausted the remedy, in other words, after dismissal of Crl.M.P.No.1694 of 2007, he cannot again file another petition and further, the age of the ink cannot be decided by an expert, as science has still not developed.

5. Aggrieved, the present revision has been preferred by the accused.

6. The learned counsel for the revision petitioner contended that actually the accused did not want expert opinion on the age of the ink. Scope of his prayer in the Crl.M.P. has been misunderstood by the trial Court.

7. The learned counsel for the revision petitioner further contended that a second petition is maintainable. The Court has to consider the stage of the trial of the case. Now, the case is posted for defence evidence. The defence evidence may be either oral, documentary or material object and also scientific evidence/opinion.

8. In this connection, the learned counsel for the revision petitioner cited (i) T.Nagappa vs. Y.R.Muralidhar [(2008) 5 S.C.C. 633], (ii) G.Someshwar Rao v. Samineni Nageshwar Rao and another (AIR 2009 SC (Supp) 2050), and K.Kannan vs. Rohini Metals [(2010) 2 MLJ 647].

9. On the other hand, the learned counsel for the respondent/complainant would contend that the very aim of the accused/revision petitioner is to derail the trial. To establish his bona fide, he should have raised this objection at the first opportunity in the trial Court. He did not do so. Further, the age of the ink cannot be decided because still the technology has not developed. In this connection, he has cited Jai Aanuman Jewellery vs. P.Murugan (Crl.R.C.No.1031 of 2015, dated 25.09.2015) (Madras)

10. I have given my thoughtful consideration to the forcible arguments of either side and perused the impugned order and the materials on record and the decisions cited by both sides.

11. Now the question is whether the impugned order passed by the XXIII Metropolitan Magistrate, Saidapet, suffers from legality.

12. I have already given sufficient facts. We need not duplicate it.

13. Right of fair trial though not expressly worded in Article 21 of the Constitution of India, now it has been held to be included in Article 21 of the Constitution of India. A procedure by which, liberty of a person is curtailed, and the procedure is arbitrary, it militates against the principles laid down by the Hon'ble Supreme Court in Union of India vs. Menaga Gandhi (2008) 5 S.C.C. 33). The procedure by which if right of defence to let in defence evidence is curtailed, then it is not a fair trial. (Also see T.Nagappa vs. Y.R.Muralidhar, [(2008) 5 S.C.C. 633].

14. I have anxiously considered the rival submissions, perused the impugned order and the materials on record.

15. Section 243 of Cr.P.C. enables the accused to let in defence evidence. Defence evidence is a component of fair trial. It is well settled that a person, who is accused of charges, should be given opportunity to defend himself. This is the objective or philosophy behind Section 243 of Cr.P.C.

16. In this case, the revision petitioner/accused was bogged down in the trial Court, because of he having failed in his earlier attempt seeking similar relief in Crl.M.P.No.1694 of 2007. Again he filed a second petition. It has been strongly opposed by the respondent as not maintainable.

17. In K.Kannan vs. Rohini Metals [(2010) 2 MLJ (crl) 647], this Court, on the issue of right of defence, fair trial, under Section 243 Crl.P.C., noting down the stage of the trial, namely, defence evidence, held that an independent petition by the defence under Section 243 of Cr.P.C. stage can be maintained to let in evidence by an expert although earliest application of the accused, before trial, has been dismissed by the trial Court.

18. In G.Someshwar Rao vs. Samineni Nageshwar Rao and another (AIR 2009 SC (Supp) 2050) similar contention was raised before the Supreme Court, namely, that a second petition to send for the documents for expert opinion cannot be maintained.

19. The Hon'ble Supreme Court in paragraph Nos.13 and 14 held as under:

"13. Evidently, he had filed two successive applications; the second application was, thus, not maintainable. This itself goes to show that he intended to delay the disposal of the matter. He could have examined his own expert. He may still do so for which, we are sure, the Court shall grant him reasonable opportunity. Even now, the court will be entitled to exercise its jurisdiction, if it so thinks fit and

proper in terms of Section 73 of the Indian Evidence Act.

14. Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that the interest of justice would be subserved if an opportunity is granted to the appellant to examine an expert at his own costs. If he requisitions the services of an expert, the learned Judge would grant him an opportunity to examine the disputed documents, submit a report and examine himself as a witness in the case preferably on the same date. Such a step, however, must be taken by the appellant within six weeks from date."

20. It flows from Samineni Nageshwar Rao, (supra), that although an application for sending the document for expert opinion, has been filed at the earliest stage of the trial, which had been dismissed, still, at the stage of letting in defence evidence, the accused can engage an expert and obtain his opinion at his own cost and let in the expert evidence as defence evidence and in such a circumstance, the Court is bound to appreciate such evidence.

21. Thus, looking this matter from different angle, in the light of the ratio of the Hon'ble Supreme Court and this Court, we have to modify the impugned order for different reasoning.

22. In the circumstances it is ordered as under:

(i) The revision petitioner/accused is permitted to engage a scientific expert, who shall compare the signature in Exs.P1 and P2, stated to be of the revision petitioner, together with the writings in the contents part of Exs.P1, P2 and P7 and give his report.

(ii) The trial Court will examine the said expert as a defence witness and through him, his report shall be exhibited on the defence side and the respondent shall be given opportunity.

(iii) The said defence evidence shall be produced before the trial Court on or before 09.12.2016.

(iv) connected miscellaneous petition is closed.

(v) Accordingly, this criminal revision petition is disposed of.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The XXIII Metropolitan Magistrate, Chennai

2.The Chief Metropolitan Magistrate Egmore
Chennai

+1 cc to M/s.V.Purushothaman Advocate sr 67999

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