

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.11451 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the order dated 13.01.2016 passed in CrI.M.P.No.2014 of 2015 in C.C.No.172 of 2015 passed by the IX Special Magistrate, Ranga Reddy District at Hastinapuram, Hyderabad, whereby the Trial Court denied sending the documents to handwriting expert to identify the age of the ink.

The respondent filed complaint against the petitioner under Section 138 of Negotiable Instruments Act. The petitioner took a plea that the Exs.P1 & P2 were blank signed documents which were kept with one K. Sekhar Reddy who is the attesor of the promissory note and the same were misused by the respondent by filling up the columns though the entire amount was repaid by the petitioner. It is the case that during 2010, original transaction took place between the petitioner and K. Sekhar Reddy by issuing a blank signed cheque for Rs.1,50,00/-and blank signed promissory note which were not returned back to the petitioner and thereby the documents were misused by the complainant.

The defense set up by the petitioner before the Trial Court is that, Ex.P-1 which is a cheque admittedly reflects the difference in writings when compared to the signature of the accused and the age of the ink has to be determined by the Court. The Trial Court observed that it is an impossible task with the present technology for the expert to give opinion about the age of the writings or the age of the ink, and also observed that there is no difference in the writings.

The Trial Court concluded that the age of ink and writings cannot be determined by the expert and expressed its opinion regarding age.

Learned counsel for the petitioner contended that the Court can dismiss the petition filed under Section 45 of Indian Evidence Act.

Learned counsel for the petitioner places reliance on **T. Nagappa v. Y.R. Muralidhar**¹ wherein the Supreme Court held that, when the contention has been raised that the complainant has misused the cheque, even in a case where a presumption can be raised under Section 118 (1) or 139 of the said Act, an opportunity must be granted to the accused for adducing evidence in rebuttal thereof.

The Supreme Court further stated that the burden is always on the accused to prove that the cheque was issued in discharge of legal enforceable debt and that was issued in the circumstances stated above. When the petition is filed for opinion of an expert, such application should be refused only on the ground that it is made for the purpose of delay or defeating the ends of justice and such case shall be recorded by the Magistrate in writing.

Thus, from the principle laid down in the above judgment, the Magistrate can reject such request on the ground that it is made for the purpose of fixation or delay or for defeating the ends of justice and that the Court has to record the same. But here, the Magistrate recorded a finding that it is impossible for the expert to give opinion as to the age of the ink. But, without referring any judgments of the Apex Court or this Court in support of the contention, a conclusion was arrived at by the Special Magistrate. Therefore, the conclusion

¹ LAWS (SC) 2008 (4) 109

arrived by the Magistrate is contrary to the principle laid down by the Apex Court (referred supra). Hence, the order is set-aside.

As the petitioner contended that the complainant/2nd respondent filled the blank cheque with different ink and the Court also observed that there is a variation in the colour of the ink and to prove the age of the ink and date of issue, the petitioner sought for expert opinion of the document to decide the age of the ink. If, for any reason, it is for the expert himself to return the document expressing his inability to express his opinion about the age of the ink. But the conclusion arrived by the Court is premature, and such order cannot be sustained. Having considered the facts and circumstances of the case, I find that it is a fit case to refer Ex.A-1 to the expert for his opinion as to the age of the ink and by fixing a specific time subject to compliance of formalities required under law like payment of expert fee, etcetera.

Hence, the Trial Court is directed to send the cheque for opinion of a government expert to give opinion as to the age of the ink, subject to compliance of other formalities by fixing the date for obtaining report to avoid delay in deciding the matter pending before this Court.

With the above direction, the criminal petition is allowed.

Consequently, miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:25.10.2016
SP