

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.692 OF 2017

ORDER:

The revision petitioner is the accused and 2nd respondent is the complainant in C.C.No.530 of 2015, which is maintained on the file of IV Additional Judicial Magistrate of First Class, Tirupati, for the offence under Section 138 N.I.Act. It is during trial, the accused/petitioner filed before the trial Magistrate, Crl.M.P.No.732 of 2017, under Section 45 of the Indian Evidence Act, to send Ex.P1 cheque to the handwriting expert for his opinion with regard to the age of signature of the cheque and other writings like name of bearer, date of cheque, amount of cheque in figures and words and handwriting of persons and difference of inks used. The petition was ended in dismissal by impugned order dated 14.02.2017, against which the present revision is maintained.

2. The contentions in the grounds of revision by the accused/petitioner vis-à-vis the oral submissions in the course of hearing, in nut shell, are that the learned Magistrate miserably failed to appreciate the contentions of the accused in proper perspective and went wrong in dismissing the application, instead of allowing, to send the disputed signatures on the cheque with other available

admitted signatures to handwriting expert for comparison and opinion and the observation that there are no bonafide reasons in the application of accused in seeking to send the disputed signatures and writings on the cheque to expert is *per se* unsustainable and predetermined conclusion and by ill appreciation of the evidence of P.W.1 on record despite there is specific defence that of the accused that he lost the duly signed cheques on 17.07.2014 and lodged a complaint to police on 19.07.2014 and the same is also his defence in the right from the reply notice given to the statutory notice after so-called dishonor of cheque and it is thereby necessary to set out the valuable defence of the accused to send the disputed signature on the Ex.P.1 cheque to handwriting expert and sought for setting aside the dismissal order by allowing the same in allowing the revision.

3. Whereas, it is the contention of counsel for the complainant/respondent to the revision that the impugned order of the lower court holds good and for this Court, while sitting in revision within the limited scope, there is nothing to interfere. Hence to dismiss.

4. Heard both sides and perused the impugned order and other material on record and also the expressions placed reliance by both sides in support of their respective contentions.

5. The further facts necessary in deciding the scope of the revision *lis* are that as per the case of the complainant the accused resided sometime as neighbour to him at Subhash Nagar and developed friendship, out of that accused approached the complainant in first week of July, 2014 to lend Rs.3,50,000/- as hand loan, saying in need of money for the business necessities urgently and with a promise to repay within two months and from the same considered by the complainant and orally lent in last week of July 2014, said amount without asking any pro-note from friendship and in September 2014, complainant shifted his residence to Raja Reddy Nagar from Subhash Nagar, within Tirupati town, and accused did not keep his promise alive and when complainant was asking, he was postponing without repayment and on 06.07.2015, the complainant demanded the accused to discharge the same, for which accused issued the cheque – Ex.P1 bearing No.058429, dated 06.07.2015 of drawn on ICICI Bank, Tirupati, for Rs.3,50,000/- and when the same was presented on the self-same date, it was returned on 08.07.2015 of funds insufficient and after bank returned, cheque returned memo, dated 09.07.2015, received. When approached the accused, he gave evasive reply, from which, complainant issued notice dated 24.07.2015 and accused having acknowledged on 31.07.2015, gave reply with false allegations on 19.08.2015. The documents enclosed with the private complaint are the so-called cheque with cheque

presentation and cheque return memos and office copy of legal notice, besides acknowledgment and reply notice.

6. The reply of the accused/petitioner to the statutory notice of complainant was that the so-called approach of the accused to the complainant, much less, in July 2014, first week or asking for hand loan of Rs.3,50,000/- or with a promise to repay in two months or his payment of the same orally or the demand for repayment subsequently and evading to pay or giving of cheque on 06.07.2015 are false and he did not issue any such cheque and there was no borrowal and in fact on 19.07.2014, he kept some of the blank cheques signed by him in his motor cycle to have availment of car loan from the bank by made ready and when kept the motor cycle at opposite to his house and went inside for some urgent purpose to bring documents to approach the bank, he could not avail the car loan on that day and when he verified about the blank cheques in his motor cycle found those signed blank cheques missing along with some other cheques in the name of his wife and he searched around and could not get and he reported the same to the Bank Manager of ICICI on 19.07.2014, about his signed blank cheques lost and also complained to the SHO, East P.S., Tirupati and police also gave letter dated 19.07.2014 of their enquiry though could not trace and thereby the claim is false. It is from that defence in the course of trial, the complainant was examined as P.W.1 by taken his Chief Affidavit reiterating his complaint

averments only on 27.10.2016 and he was cross-examined by accused on 15.12.2016. In the cross-examination what he deposed is that she is house wife and wife of accused was doing business and through her, she got acquaintance with accused and she advanced the loan of Rs.3,75,000/- to accused and again says it is only Rs.3,50,000/- orally and no pro-note executed by accused and accused issued the cheque and the amount was advanced to the accused at the shop in August 2014 and accused issued the cheque to her at the shop and accused and his wife got filled the blanks of the cheque. On 06.07.2015, accused issued the cheque and she advanced the loan by pledging gold with Andhra Bank, Tirupati and Andhra Bank, Tirupati, issued a notice to her of going to auction the pledged gold ornaments and she renewed the same by redeem to the same extent and said notice issued by bank not even filed in the court and denied the suggestion of she has no financial capacity to advance such a huge sum to accused. She denied the suggestion of she filed false case basing on the lost cheque of the accused by fabricating to have wrongful gain and accused never issued any cheque to her and he never borrowed any amount from her. She denied the suggestion of accused filed a private complaint against her and she filed this false case having committed theft of the cheque of the accused and denied the suggestion of she never advanced any loan amount to the accused.

7. Leave about the said cross-examination version of either Rs.3,75,000/- or Rs.3,50,000/- lent with two versions, whereas, in the complaint and notice of Rs.3,50,000/-, the other variation is what is stated in the complaint of accused acquainted to her from nearby residence at Subhash Nagar, asked for the loan and she lent, however in the evidence, during cross-examination in saying her acquaintance was only with wife of the accused and through that she got acquaintance to the accused or wife of accused was doing business in having acquaintance, which is in variance. Apart from that in not even obtaining any pro-note for the lending allegedly in August 2014, whereas as per complaint the lending was in the last week of July 2014 for accused approached in first week of July 2014, which is in variance and she did not even state who filled the contents and what is stated is that the accused and his wife got filled the blanks of the cheque. It is her evidence that the cheque was issued at the shop. In fact in the complaint it is stated and also from perusal of the Photostat copy of the cheque received from lower court shows the cheque was dated 06.07.2015 and presented on same day the writing of the signatory (drawer) is different to the handwriting of the words and figures in the cheque so also the pens used which can be more clear from the perusal of original cheque and in particular examination by expert. What in the cross examination deposed by P.W.1 of she advanced the loan amount to accused at the shop in

August 2014 and accused issued the cheque to her at the shop as if in the same day and even taken issued on 06.07.2015, not her case of any other person was there and filled the contents of the cheque.

8. As per the very reply notice of the accused and from said cross examination suggestions, his signed and unfilled cheque was lost on 19.07.2014 from his motor cycle kept opposite to his house, when he kept the signed blank cheque of him and cheque leaves of his wife therein to avail bank loan for purchase of car. He immediately issued stop payment letter to his bank on 19.07.2014 by reporting the signed blank cheques lost and also reported to the police, East P.S., Tirupati, on the self-same date.

9. Once such is the case, it is necessary to decide any requisite or not of sending the cheque to handwriting expert in recognition of the valuable defence right of the accused, as held by the Apex Court in ***Kalyani Bhaskar Vs. M.S. Sampornam***¹ and ***T.Nagappa Vs. Y.R.Muralidhar***². In fact it is held by the Apex Court in ***M.S. Narayana Menon @ Mani v. State of Kerala and Anr***³, that is also quoted with approval in ***Rangappa Vs. Sri Mohan***⁴, by differing with ***Krishna Janardhan Bhat Vs. Dattatraya G.Hegde***⁵, that the accused in establishing the defence can show the defence

¹ 2007 (2) SCC 258

² 2008 (3) ALT-Crl-62 (SC)

³ 2006 AIR SCW 465

⁴ (2010) 11 SCC 441

⁵ (2008) 4 SCC 54

version as bonafide by preponderance of probabilities and for that even cross-examination of complainant and witnesses, he can build up his defence and he may not even come to witness box, much less, by examination of any defence witness.

10. In fact, the issue as to the application when to be filed was came up for consideration before the Full Bench of this Court and in ***Bandi S S S Prasad Vs. Ravi S P Babu***⁶, and where it is answered that there is no time limit to file application in seeking to send the document containing disputed signature or writings to expert.

11. Even coming to contemporary relevancy this Court in CrI.R.C.No.3204 of 2016 in ***T.Raja Lingam @ Sambam Vs. The State of Telangana and Mara Ashok***, held that even contemporary relevancy signatures not available, the document sought for sending to the expert for comparison cannot be refused, that too when the defence of the accused is a valuable one as held in ***Kalyani Bhaskar (supra)*** and when sought for comparison as one of the available defences of the disputed cheque not issued in discharge of the burden by preponderance probability. Whether opinion of the handwriting expert to what extent value can be given since depends upon reasons, it is premature to go into it further. The court being not an expert cannot take the ordeal of

⁶ 2016 (2) ALD 1 = 2 ALT 248

comparison that too even one of the parties sought for sending to expert for comparison and opinion as per the settled law. Further the Apex Court in ***Shashi Kumar Banerjee & Ors. Vs. Subodh Kumar Banerjee & ors.***⁷, observed that an expert can say by chemical test even the age of the writing. Thus, the impugned dismissal order of the lower court is unsustainable even it is a case covered by summary trial procedure. Further in ***Jonnalagadda Ravi Shankar Vs. Jakka Rama Krishna Rao***⁸, in a civil matter, it was held by another single judge of this Court that expert is capable of arriving a conclusion even by taking note of disputed writings including from the age gap between available, admitted or specimen signatures and the disputed signatures.

12. To decide any age difference in the ink and the writings between signature on the cheque vis-à-vis the written contents of the cheque, the accused in the application under Section 45 of the Evidence Act, sought the prayer by disputing giving of the cheque and also by disputing means of complainant to lend and no borrowal and no necessity to the accused to borrow. Even for complainant not filed any proof about pledge or mortgage of her jewellery and secure of amount from bank and any notice issued by bank and any part payment and renewal for said version, these are the

⁷ AIR 1964 SC 529

⁸ 2013 (1) ALD 213

matters to be decided in trial. Thus when sought for comparison of the difference in age of the ink and writings of the signature vis-à-vis the other written contents of the cheque, the dismissal of the same by the trial Court is no way sustainable.

13. The counsel for revision petitioner/accused place reliance on two more expressions of this court viz., CrI.R.C.No.3204 of 2016 in **T.Raja Lingam @ Sambam Vs. The State of Telangana and Mara Ashok** and CrI.P.No.3686 of 2014, reported in **S.K.Health Care Formulations Pvt. Ltd Vs. Globe Glass Containers⁹**, that when it is the defence of the accused of she never issued the cheques in question and the blank cheque given to some other person was stated misused by complainant by manipulating the writings in filling the blanks of the cheque, when sending of documents sought for to note the difference in age and ink of the signature and writings to probablise the defence, the dismissal of the same is unsustainable, even signature on the cheque admitted.

14. No doubt the complainant placed reliance on the other expression of this Court in **Tekkella Radhakrishnaiah & Ors. Vs. Ganipaineni Nagaraju¹⁰**, in CRP.No.1698/2016, dated 23.12.2016, wherein it is held in dismissing the revision of the difficulty to determine the age of the writings in

⁹ 2016 (3) ALT (CrI.) 397

¹⁰ 2017 (1) LS 174

the ink between signature and other contents. In fact, it is subsequent to **Tekkella Radhakrishnaiah**, by referring to what are the judgments therein, though not that expression, but for referring to that of the Apex Court including of 1964, this Court in **T.Rajalingam**(supra), on 19.01.2017, categorically held it is possible to determine also by referring to other single judge expressions earlier of this Court including the one reported in **Jonnala Gadda Ravishankar Case**(supra).

15. Having regard to the above, the dismissal of the application by the lower court is unsustainable and the same is set aside and the petition is allowed by allowing the revision and by directing the lower court subject to deposit of Rs.10,000/- by the petitioner before the trial court within one week from date of receipt of the order to send the Ex.P1 cheque (only original) the signature and writings therein at variance in ink and age for comparison and opinion by the expert with reference to admitted signatures of accused and also of his wife with specimen signatures, preferably of available contemporary relevancy admitted signatures by call for if necessary from the bank account opening form of accused etc., as to whether any of the writings other than signature on the cheque is that of accused or of his wife and any difference in ink between them and age of ink in

difference if possible for ultimate consideration as per relevancy to the issue to decide the case on merits.

16. In the result, the criminal revision case is allowed as indicated above. Miscellaneous petitions pending, if any, in this case shall stand closed.

DR.B.SIVA SANKARA RAO, J

26.04.2017

Note: Registry to return the original depositions of P.Ws.1 and 2 back to the trial court with attested Photostat copy of Ex.P1 cheque which are received in Dis.No.425, dated 20.04.2017.

B/o.SS

