

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.663 OF 2017

ORDER:

The revision petitioner is the accused in C.C.No.1177 of 2015. The revision 2nd respondent is the *de facto* complainant. The calendar case is for the offences under Section 138 N.I.Act. It is during trial of the case, the accused filed CrI.M.P.No.246 of 2017 before the Chief Metropolitan Magistrate, Vijayawada (trial court) under Section 45 of the Indian Evidence Act to send the Ex.P1 cheque and Ex.P6, certified copy of pro-note with vakalath of accused and reply notice got issued by accused to handwriting expert for opinion. The same was ended in dismissal, by order dated 08.02.2017. It is impugning the same, present revision is maintained.

2. The contentions in the grounds of revision vis-à-vis the oral submissions of the learned revision petitioner/accused are that the impugned dismissal order of the lower court, instead of sending the documents for handwriting expert for opinion, is unsustainable and in ignorance of the material on record and contest of the accused that complainant filed the case by forging the signature on the pro-note and the cheque in question and complainant and the accused are brothers and the complainant joined hands with husband of accused

taking advantage of matrimonial differences and her husband filed divorce case against her and went unsuccessful from its dismissal. The other contention is that the learned Magistrate should have seen that the complainant misused joint account of accused and her husband in I.C.I.C.I. bank from his having custody of the cheque book and familiar with her signatures in forging and fabricating the signatures by joining hands, the same on the pro-note as well as the cheque maintaining a false claim for dishonor of cheque.

3. It is also the contention that the learned Magistrate erred in saying similar application in I.A.No.64 of 2016 in O.S.No.1063 of 2012 ended in dismissal before the Additional Senior Civil Judge, Vijayawada, on 13.04.2016, is not a ground for not a case of any similar application filed in the present cheque bouncing case apart from that order is of the Civil Court is impugned before this Court by filing revision, which is pending and thereby sought for set aside the dismissal order by allowing CrI.M.P.No.246 of 2017, filed under Section 45 of the Indian Evidence Act to send the Ex.P1's cheque and Ex.P6, certified copy of pro-note with vakalath of accused and reply notice got issued by accused to handwriting expert for opinion.

4. Whereas, it is the submission 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.

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

6. Before answering the revision *lis*, for better appreciation, it is necessary to mention further material averments in the petition and counter before the lower court. What the complainant contested in opposing the petition is that the accused in seeking to send the disputed signatures to handwriting expert did not file any admitted signatures of her. The impugned order of the lower court shows the case is at the stage of defence evidence including on costs and at that stage, the application is filed. The Ex.P1 cheque is appearing to be issued on dated 13.09.2009. There is no contemporary relevancy signatures of the accused filed and Ex.P5 reply given by the accused/petitioner is with contest about disputes between the accused and her husband arisen in May 2009 and since then, they are living away to each other, as she was driven out with wearing clothes by retaining her valuables and articles, even cheque books, by her husband and according to her, this is a forged cheque and the so-called previous debt covered by pro-note is also a forged one for nothing due by joining hands by complainant her brother with her husband taking advantage of their differences and said defence is not supported by any piece of evidence and there is no observation in the dishonor of

cheque of signature on the cheque not tallied with her specimen signatures available with bank, but for insufficient funds and mere allegation of the accused as forged one in disputing the cheque dishonor case not a ground to invoke Section 45 Evidence Act apart from the opinion of handwriting expert is fallable and court can compare otherwise and that too when it is not a civil dispute, but in a summary trial cheque bouncing case and even in civil case in the pending suit similar application filed shown dismissed.

7. In fact the evidence of the accused is a valuable right of defence as held by the Apex Court in ***Kalyani Bhaskar Vs. M.S. Sampornam***¹. In fact it is held by the Apex Court in ***M.S. Narayana Menon @ Mani v. State of Kerala and Anr***², that is also quoted with approval in ***Rangappa Vs. Sri Mohan***³, by differing with ***Krishna Janardhan Bhat Vs. Dattatraya G.Hegde***⁴, that the accused in establishing the defence can show the defence version as bonafide by preponderance of probabilities and for that even cross-examination of complainant and witnesses, he can build up defence and he may not even come to witness box, much less, by examination of any defence witness.

8. In fact, this issue as to the application when to be filed was came up for consideration before the Full Bench of this

¹ 2007 (2) SCC 258

² 2006 AIR SCW 465

³ (2010) 11 SCC 441

⁴ (2008) 4 SCC 54

Court and Full Bench in **Bandi S S S Prasad Vs. Ravi S P Babu**⁵, of there is no time limit to file application in seeking to send the document containing disputed signature or writing to expert. 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 when sought for comparison as one of the available sources of the disputed cheque in discharge of the burden by preponderance probability, the court has to consider rather refusal as held in **Kalyan Bhaskar(supra)** and whether opinion of the handwriting expert to what extent value can be given since depends upon reasons any observation by the trial Magistrate of it is a fallable or the court can compare if at all is unsustainable for the court being not an expert cannot take the ordeal of comparison that too even one of the parties sought for sending to expert as per the settled law and further the Apex Court in **Shashi Kumar Banerjee & Ors. Vs. Subodh Kumar Banerjee & ors.**⁶, 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 also in saying it is a summary trial procedure, thereby, accused not

⁵ 2016 (2) ALD 1 = 2 ALT 248

⁶ AIR 1964 SC 529

entitled to such recourse even the Apex Court in ***Kalyani bhaskar (supra)*** says such a valuable defence right of the accused has to be considered even the proceedings are summary in nature and further in ***Jonnalagadda Ravi Shankar Vs. Jakka Rama Krishna Rao***⁷, 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.

8. Having regard to the above, the impugned dismissal order of the lower court is set aside and the revision is allowed by directing the lower court to obtain specimen signatures of the accused and send by securing the original cheque with disputed signature and writing by keeping certified photocopy of it to the file to the handwriting expert along with the original pro-note available in the criminal case, if any and if the original pro-note is not available, if at all any of the parties ask by call for from the civil court from the pending suit if at all filed for said purpose by ascertaining from both parties as to available admitted signatures including by call for the original specimen signatures in opening the bank account by the accused along with her husband or independently as the case may be for the contemporary relevancy and send the same including with

⁷ 2013 (1) ALD 213

the Section 251 Cr.P.C. examination of the accused before the court or any deposition of the accused before the court including any signature on the summons and registered notice acknowledgment etc., subject to petitioners depositing within one week from date of receipt of the order Rs.10,000/- before the trial Magistrate for the trial Magistrate to meet the expenditure for the expert out of it and refund any balance to the accused after said purpose.

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

.04.2017
SS

DR.B.SIVA SANKARA RAO, J

