

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.413 OF 2017

ORDER:

Aggrieved over the order, dated 09.01.2017, in Criminal M.P. No.2334 of 2016 in C.C. No.117 of 2016 passed by the learned Special Magistrate - II, Rajendranagar, Ranga Reddy District, the present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.).

2. By the aforesaid order, the request made by the petitioner viz., D. Anand, accused in the above C.C. for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, for sending Ex.P-4 promissory note along with his admitted signatures available on the Vakalat, examination under Section 251 Cr.P.C., examination under Section 313 Cr.P.C., and his evidence as DW.1 apart from obtaining his thumb impression in the open Court, to the Department of Forensic Laboratory for opinion of the handwriting expert to identify the handwriting and signature on the Court documents comparing with the signature and thumb impression on Ex.P-4 purported to be that of the petitioner, was rejected.

3. Sri K. Lakshman, learned counsel for the petitioner, relying on the ruling of the Hon'ble Supreme Court in **T. Nagappa v. Y.R. Muralidhar**¹, would submit that the learned Magistrate was not right

¹ AIR 2008 SC 2010

in rejecting the request when onus rests on the petitioner to prove that signature and thumb impression occurring on relevant documents do not belong to him. More so, when the cardinal principle of fair trial is kept in view. It is his submission that there is patent illegality that crept into in passing the order now under challenge, and, therefore, seeks to set aside the order and allow Criminal M.P. No.2334 of 2016 to enable the petitioner to obtain expert opinion and to substantiate his stand.

4. Before adverting to the fact-situation and the reasoning adopted by the learned Magistrate in rejecting the request, it would be appropriate to refer to the ruling and the law declared by the Hon'ble Supreme Court in **Nagappa's case** (Supra 1). The fact-situation would reflect that the petitioner - **accused** therein said to have issued a cheque in favour of the respondent for a sum of Rs.7,50,000/- on 08.10.2004, contending that the respondent therein had obtained a signed cheque from him in the year 1999 as a security for hand-loan of Rs.50,000/-, which has been paid back, but, instead of returning the cheque, the same has been misused by entering a huge amount which he did not owe. The request made therein was for determining the age of the signature by the expert of a Forensic Lab. In that context, the said application was filed under Section 293 of Cr.P.C., though, ought to be under Section 243 of Cr.P.C. The petitioner therein was unsuccessful before the trial Court and also before the High Court of

Karnataka State. He carried the matter to the Hon'ble Supreme Court. However, the Hon'ble Supreme Court while following its earlier decision observing that the issue therein almost stood concluded by a decision in **Kalyani Baskar (Mrs.) v. M.S. Sampooranam (Mrs.)** [(2007) 2 SCC 258] has extracted the expression contained in paragraph No.12 and reoriented the question and allowed the petition; what has been stated by the Hon'ble Supreme Court in paragraph No.9, since apt, is extracted, thus:

“9. The learned Trial Judge as also the High Court rejected the contention of the appellant only having regard to the provisions of [Section 20](#) of the Negotiable Instruments Act. The very fact that by reason thereof, only a prima facie right had been conferred upon the holder of the negotiable instrument and the same being subject to the conditions as noticed ~~hereinbefore~~, we are of the opinion that the application filed by the appellant was bona fide.

The issue now almost stands concluded by a decision of this Court in [Kalyani Baskar \(Mrs.\) v. M.S. Sampooranam \(Mrs.\)](#) [(2007) 2 SCC 258] (in which one of us, L.S. Panta, J., was a member) wherein it was held:

"12. [Section 243\(2\)](#) is clear that a Magistrate holding an inquiry under [CrPC](#) in respect of an offence triable by him does not exceed his powers under [Section 243\(2\)](#) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque

on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the handwriting expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. "Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them." "

The question on which opinion of the expert was felt necessary by the Hon'ble Supreme Court is contained in paragraph No.10, which is, thus:

"10. However, it is not necessary to have any expert opinion on the question other than the following :

"Whether the writings appearing in the said cheque on the front page is written on the same day and time when the said cheque was signed as "T.Nagappa" on the front page as well as on the reverse, or in other words, whether the age of the writing on Ex.P2 on the front page is the same as that of the signature "T.Nagappa" appearing on the front as well as on the reverse of the Cheque Ex.P2?"

The learned counsel for the petitioner mainly rests his stand on the aforesaid ruling and requests to grant the relief prayed for by the petitioner.

5. No service on respondent No.2 - *de facto* complainant is ordered, as having opined that there is no merit in the request made herein as patent illegality is not found in the order passed by the learned Magistrate.

6. The fact-situation in the present request is altogether different from the fact-situation occurring in **Nagappa's Case** (Supra 1). In the present case, the stand of the petitioner is that neither he signed nor put any thumb impression on Ex.P-4. Ex.P-4 is promissory note. The order under challenge would clearly show that it is not for the first time, the petitioner has made such a request, and, in fact, earlier, he had filed Criminal M.P. No.1361 of 2016 under Section 45 of the Indian Evidence Act, 1872, making a similar request after PW.1 was examined and Exs.P-1 to P-9 were marked. That petition was dismissed by the learned Magistrate on 22.08.2016, having recorded a finding that there is no denial in cross-examination of PW.1 with regard to execution of Ex.P-4 promissory note. The said order attained finality. Later, the petitioner has chosen to file Criminal M.P. No.1513 of 2016 under Section 311 of Cr.P.C. to recall PW.1 in order to further cross-examine him on Ex.P-4; perhaps with a view to overcome the finding recorded in the order in Criminal M.P. No.1361

of 2016. Even that request was also rejected by dismissing the petition. Admittedly, the petitioner has not carried the matter further challenging the said order. Later, the petitioner proceeded with trial and even subjected himself to examination under Section 313 Cr.P.C. expressing that he would like to enter upon defence and thereafter, he was examined as DW.1 and even he was cross-examined wherein he has denied that Ex.P-4 contains his signature. Thereafter, the present application was filed before the learned Magistrate.

7. The learned Magistrate referring to the earlier orders, opining that the petitioner having failed to challenge the earlier orders, coming forward after his examination was over, which is nothing but, to drag on the proceedings for a considerable time, which, in fact, according to the learned Magistrate, the petitioner had already enjoyed, and, thereby dismissed the petition. These findings recorded by the learned Magistrate are based on the record and cannot be denied by the petitioner. When the petitioner has not chosen to question the orders in Criminal M.P. No.1361 of 2016 filed under Section 45 of the Indian Evidence Act, 1872, and Criminal M.P. No.1513 of 2016 filed under Section 311 Cr.P.C., certainly, yet another application with similar relief as that of the relief made in Criminal M.P. No.1513 of 2016, is not warranted. Therefore, the findings recorded by the learned Magistrate cannot be faulted.

7. Turning to, whether the fact-situation occurring herein squarely falls within the law declared by the Hon'ble Supreme Court in **Nagappa's Case** (Supra 1), the answer would invariably be "No." Petitioner therein has taken a definite stand that the cheque in question was obtained towards security when the main transaction has taken place and the definite stand taken by him is that signature was taken on a blank cheque when the original transaction has taken place and it was utilized subsequently entering writing before the said cheque was presented for encashment. The latitude of time between the two events was the factor in raising such a plea by the petitioner therein to determine the age of the signature on the cheque by comparing with the age of the writing made in that cheque. Such is not the tangible stand the petitioner has taken in the present case. The petitioner, in fact, intends to get the signature as well as thumb impression occurring on Ex.P-4, which is promissory note, compared by an expert, bluntly denying that they do relate to him. The other circumstance that when he was unsuccessful in getting opinion of the expert in his earlier attempt and allowed the order to attain finality and even the order in a subsequent application referred to hereinbefore, certainly, the conduct of the petitioner gets reflected that he intends to protract the litigation. Therefore, not only the ruling relied on by the learned counsel for the petitioner would not render any assistance, but also the finding recorded by the learned Magistrate that even the intention of the petitioner in making the present application is nothing

but to drag on disposal of the C.C. cannot also be faulted. Thus, there is no merit in the petition.

8. Therefore, the Criminal Petition is dismissed, at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

April 4, 2017.

PV

