

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.1782 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, ('the Code', for short) by the unsuccessful petitioner/ accused is directed against the order, dated 05.05.2017, of the learned Special Magistrate-IV, Visakhapatnam, passed in CrI.M.P.No.3149 of 2017 in C.C.No.77 of 2017.

2. I have heard the submissions of *Sri K.Srinivasa Rao*, learned counsel appearing for the petitioner/ accused, and of *Sri A.S.C.Bose*, learned counsel appearing for respondents 2 to 4. I have perused the material record.

3. The petitioner/accused is facing trial in C.C.No.77 of 2017 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. When the trial in the said case is in progress, he filed the aforesaid miscellaneous petition under Section 45 of the Indian Evidence Act, 1872, requesting to send the promissory note and the cheque to a handwriting expert for comparison of the signatures said to be of the accused on the said documents with her admitted signatures and for furnishing a report as to the genuineness or otherwise of the disputed signatures on the said documents and also the ages of the inks of the writings in the body of the promissory note and cheque as well as the signatures thereon. The said petition was resisted by the 2nd respondent/ complainant. On merits and by the orders impugned in this revision, the trial Court dismissed the petition of the petitioner/ accused. Therefore, the petitioner/ accused is before this Court.

4. The case of the petitioner/ accused and the submissions of her learned counsel are as follows: 'The accused never borrowed any amount under the

disputed promissory note and never executed the said promissory note. She did not issue the cheque as stated in the complaint of the complainant. She reserves her right to disclose her defence with regard to the aspect as to how the cheque signed by the petitioner/accused went into the hands of the complainant. The promissory note is fabricated and the signature on the promissory note said to be of accused is forged. The original complainant died after the complaint is filed. His legal representatives who are his wife, son and daughter are brought on record as complainants 2 to 4 and they are prosecuting the complaint. A civil suit on the foot of a promissory note is also filed and is pending. In order to prove that the promissory note is fabricated and that the signature thereon is forged and that the ages of the inks of the writings on the promissory note as well as the writings in the body of the cheque and the age of the ink of the signatures on the cheque and the promissory note are not the same and that the ages of the inks of the said writings and signatures are different, it is just and necessary and it is in the interests of justice to send both the disputed documents to a handwriting expert for furnishing an opinion on the above said aspects.'

5. Per contra, the case of the complainants 2 to 4, who are the legal representatives of the deceased complainant, and the submissions made on their behalf, in brief, is this: 'After the cheque which was issued towards a legally enforceable debt had bounced, the deceased complainant got issued a lawyer's notice, dated 07.09.2015. The same was received, vide the acknowledgment dated 10.07.2015. However, the accused did not choose to give any reply. She wantonly and deliberately failed to give a reply. Therefore, the accused admitted the contents of notice. If really, the promissory note is fabricated and the signature on the promissory note is forged, she ought to have issued a reply to the statutory notice got issued by the deceased complainant. She indeed ought to have issued a reply raising all

the contentions which are now raised in the present petition. She did not do so. The petition is filed with a *mala fide* intention to delay the disposal of the calendar case. The signature on the cheque is admitted. It is only stated that the right to disclose the defence as to how the cheque signed by the accused came into the hands of the complainant was reserved. Even the defence was not disclosed with oblique motives. The promissory note is genuine. The cheque was given towards the legally enforceable promissory note debt. There is no need to send the said documents to an expert for obtaining any opinion. The Court is having power to compare the handwritings as well as signatures. As the disputed document contains only signatures and not the thumb impressions, there is no need to call for a report with the opinion of the expert. The petition may be dismissed.'

6. Learned counsel for the petitioner/accused would further submit as follows: 'In view of the contents in the petition of the petitioner that she did not borrow money and that the promissory note is fabricated and forged and that the contents of the cheque are not written by the petitioner/accused and that the ages of the inks of the writings on the promissory note and the body of the cheque are different and that the ages of the inks of the signatures on the promissory note and the cheque are also different, the trial Court ought to have considered the request of the petitioner/accused. The trial Court erroneously dismissed the petition though obtaining an opinion from an expert is highly essential for considering various aspects of the defence of the petitioner/accused. The trial Court erroneously made an observation that the petitioner did not produce any documents for comparison with her admitted signatures of a contemporaneous period. There is no need for production of such documents as the vakalat with the signature of the accused is already available on record and as the petitioner is prepared to give her signatures in open Court as and when directed by the Court for comparison of the same with

the disputed signatures. It is incorrect to say that it is not possible to determine the age of the ink used for the writings in the documents and the signatures thereon. The findings given by the Court below are incorrect. The Court below ought not to have held that it has got power to compare the signatures and the writings and ought to have called for an opinion from the expert. As per the Full Bench decision of this Court, there is no bar for sending the disputed documents with the disputed writings and signatures to an expert and such exercise can be undertaken at any stage of the matter. When there is a long lapse of time between the signature on the cheque on one hand and the writings on the other, the trial Court ought not to have held that the Court can compare the writings and signatures as in the facts and circumstances of the case, it is only an expert who can furnish an opinion. The order impugned is unsustainable and is liable to be set aside.'

7. I have given detailed and thoughtful consideration to the facts and submissions.

8. Learned counsel for the complainants 2 to 4, while supporting the orders of the Court below, would bring to the notice of this Court that as of now there is no technology available with the forensic experts in India to determine the age of the ink of a signature or hand writing. Further, mere determination of the age of the ink of disputed signature or writing, even if there exists any science or technology for that purpose, cannot by itself determine the approximate date on which or the time at which the signature was made or matter was written, as it is possible that the executant might have made the signature or written the contents with a pen containing the ink which was manufactured long time prior to the making of the signature. To put it in other words there might be time lag between the date of the manufacture of the ink and the date on which the signature was made and in such a case the

determination of the age of ink would be irrelevant and does not serve any purpose. Before proceeding further in the matter, it is necessary to note the ratio in the decision in *Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu (died) per L.Rs and others*¹, where in a Full Bench of this Court held as follows:

“It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/signature with the admitted handwriting/signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting/signature for comparison to an expert merely because the time gap between the admitted handwritings/signature and the disputed handwriting/signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed handwritings/signatures with admitted handwritings/signatures with admitted handwritings/signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the expert concerned to voice his conclusion as to whether the disputed handwriting/signature and the admitted handwriting/signature are capable of comparison for a viable expert opinion. The view expressed by the Division Bench in *Janachaitanya Housing Limited v. Divya Financiers* [(2008)3 ALT 409 (D.B)], as to the stage of the proceedings when an application can be moved by a party under Section 45 of the Indian Evidence Act, 1872, continues to hold the field and there is no necessity for this Full Bench to address that issue.”

In *Janchaitanya Housing Ltd., Hyderabad v. Divya Financiers, Guntur*²;

the question that was considered was – ‘whether the application under Section 45 of the Indian Evidence Act filed for sending signatures for comparison and expert opinion, can be entertained at a later stage, including a stage when the suit is coming up for arguments after entire trial?’ Having referred to the earlier decisions, this Court, while answering the reference had held that no

¹ 2016(2) ALT 248(F.B)

² 2008(4) ALD 339 (DB)

time can be fixed for filing application under Section 45 of the Evidence Act for sending the disputed signature or writings to the handwriting expert for comparison and that the said matter shall be left open to the discretion of the Court; for exercising such discretion when exigencies so demand depending upon the facts and circumstances of each case.

9. I have given earnest consideration to the facts and the submissions. I have gone through the cited decisions. Be it noted that there is no quarrel with the settled legal propositions.

10. The accused is admitting her signature on the cheque and she does not as of now disclose the reason for the signed cheque coming into the possession of the deceased complainant. The accused while contending that her signature/s on the promissory note is/are forged and that the suit promissory note is fabricated makes a request to send the promissory note to an expert for furnishing an opinion as to the genuineness or otherwise of the signature/s said to be of the accused on the promissory note after comparison of the signature thereon with the admitted signatures of the accused. Admittedly, the accused does not say as to what are those documents with her admitted signatures. The complainants are not admitting her signature on her vakalt. The accused has not made available to the Court below any document of reliable nature containing her standard signatures, which she had put in the normal course while dealing with any other transactions. Except the vakalat, there is no other document containing the signature of the accused before the Court below. The accused also offers to give her specimen signatures in open Court as and when directed by the Court for being sent to the expert along with her vakalat for comparison. To the extent possible it is always necessary to furnish to the expert the best available documents containing the signatures, which are of reliable and comparable standard, to obtain an assured opinion; and, if only there is no such possibility to secure such documents, a resort can be had

to sending the vakalat and also the signatures that may be taken in open Court for comparison but not otherwise. When the law is settled that expert's evidence as to handwriting or signatures is opinion evidence and it can rarely, if ever, take the place of substantive evidence, there is no point in seeking such opinion evidence by making available signatures/ writings that are not of reliable or assured standards as any such opinion evidence obtained on such data or material would make the opinion evidence further weak and undependable. Further, the accused having received the statutory notice got issued by the complainant (since died) failed to give a reply to the said notice. Having regard to the facts of the case, the court below is of the considered view that there is no need to consider the request of the accused, particularly for the reason that the signature on the cheque is admitted and as it was of the view that the facts of the case do not necessitate obtaining of an opinion of an expert.

11. On the above analysis this Court finds that there is no merit in the contentions of the accused and that the order impugned, which is justified in the facts and circumstances of the case, does not brook interference.

12. In the result, the Civil Revision Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

04th August, 2017
RAR

M. SEETHARAMA MURTI, J