

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.3118 OF 2016

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the order dated 28.11.2016 passed in CrI.M.P.No.625 of 2016 in C.C.No.116 of 2016 on the file of the Court of the I-Special Magistrate, Hasthinapuram, Ranga Reddy District.

2. The contention of the learned counsel for the petitioner is three fold: (1) the trial Court dismissed the petition on erroneous grounds without taking into consideration that the petitioner lost the cheque book; (2) the trial Court failed to consider that the second respondent has filled up the blanks in the cheque – Ex.P.1 and the promissory note – Ex.P.3; and (3) the petitioner did not issue the cheque in favour of the second respondent.

3. *Per contra*, the learned counsel for the second respondent submitted that the petitioner having admitted his signatures on Ex.P.1-cheque and Ex.P.3-promissory note, is not entitled to file an application under Section 45 of the Indian Evidence Act. He further submitted that the opinion expressed by an expert is not a substantial piece of evidence; therefore, the petition is not maintainable. He also submitted that there is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court.

4. It is the case of the second respondent that the petitioner issued a cheque bearing No.271299, dated 17.06.2016 for an

amount of Rs.35,00,000/- drawn on ICICI Bank, Habsiguda Branch, Hyderabad, in her favour. The second respondent presented the cheque for collection on 21.06.2016 and the same was returned with an endorsement "account closed". The second respondent got issued a legal notice dated 24.06.2016 directing the petitioner to pay the cheque amount within 15 days from the date of receipt of the notice, failing which, she will be constrained to approach the Criminal Court. The petitioner did not choose either to pay the amount or to issue a reply notice. The second respondent, having no other alternative, filed a complaint under Section 200 Cr.P.C. on the file of the I-Special Magistrate, Cyberabad at L.B.Nagar against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, (for short, 'N.I. Act').

5. While things stood thus, the petitioner herein filed CrI.M.P.No.625 of 2016 in C.C.No.116 of 2016 under Section 45 of the Indian Evidence Act to refer Ex.P.1-cheque and Ex.P.3-promissory note to Forensic Science Laboratory to determine the handwriting and age of ink written and the same was dismissed.

6. To substantiate the argument, the learned counsel for the petitioner placed reliance on the decision in **Baburao Madhavrao Munnemanik v. Vishwajit Pratapsing Pardesh and another**¹, wherein it was held that "“Fair trial” includes fair and proper opportunities allowed by law to prove innocence and adducing evidence in support of defence is a valuable right and as such denial of that right means denial of fair trial.”

¹ 2012(1) CCC 598 (Bom.)

7. To substantiate the argument, the learned counsel for the second respondent has drawn the attention of this Court to the decision in **A.Inayathullah v. A.Ramesh**², wherein the Madras High Court held at paragraph No.6 as follows:

“6. PERUSAL of the impugned order shows that before the Court below, the complainant has been examined. Seven documents have been marked. Four witnesses have been examined and at that stage, application has been filed. Cheque is stated to have been issued on 18.02.2013. As rightly observed by the Court below, petition under Section 45 of the Indian Evidence Act r/w Section 139 of the Negotiable Instruments Act, has been filed after the examination of the accused. There is no competent authority to ascertain the age of the ink and the said facility is stated to be not available in the Forensic Departments in India. There is no illegality in the finding recorded by the Court below, warranting interference. For the reasons stated supra, order made in CrI.M.P.No.2070 of 2014 dated 02.12.2014 in C.C.No.77 of 2013 on the file of the learned Judicial Magistrate (Fast Track Court), Vellore District, does not call for any interference. Hence, the Civil Revision Case is dismissed. Consequently, the connected Miscellaneous Petition is closed.”

8. In order to appreciate the rival contentions, it is apt to refer the following decisions:

1) K.Ramalingam v Mustafa Kamal³, wherein the Madras

High Court held at paragraph No.18 as follows:

“18. Considering the above said citations, it is clear that in India, that too in Tamil Nadu, there is no such experts to ascertain the age of the ink are available. Even though, the Court sent the documents for ascertaining the age, without assigning any remarks or comment they merely returned the same. In such circumstances, the request of the Petitioner to send the document/ cheque for Forensic department to ascertain the age of the ink in the cheques question is only to drag on the proceedings. Hence, I do not find any merits in this application since there is no

² LAWS (MAD)-2015-1-211

³ 2011 (2) RCR (Criminal) 972

facilities are available to ascertain the age of the ink there is no illegality and irregularity in the orders passed by both the Courts below and this application is liable to be dismissed.”

2) S.Gopal v D.Balarajan⁴, wherein it was held at paragraph No.15 as follows:

“15. It is found that the age of the ink cannot be determined by an expert with scientific accuracy. Further, the use of old ink manufactured long ago will definitely create a dent in the opinion furnished by an expert. Therefore, there is no necessity for sending the disputed cheque admittedly signed by the petitioner to an expert for his opinion. The order passed by the learned Judicial Magistrate I, Erode in C.M.P. No. 2915 of 2007 in C.C. No. 1287 of 2006 does not suffer from any illegality or impropriety. Therefore, there is no warrant for interference with the well considered order passed by the Trial Court.”

3) Yashpal v Kartar Singh⁵, wherein it was held as follows:

“The basic rationale of the provision is that if the opinion of the scientific investigation is going to help in extracting the truth and determining the controversy raised in the dispute before the Court then such an investigation could be permitted. However, in the present case, such investigation is not likely to help to conclusively prove that the writing dated 11-2-1998 was infact recorded earlier because the age of the ink cannot be determined on the basis of the writing. If the ink is manufactured five years before the date of the execution of the document and used on 11-2-1998 for the first time then instead of resolving any controversy it would create confusion. Therefore, no useful purpose could be served by allowing such an application. It is true that opinion of expert is relevant under Sections 45 and 46 of the Indian Evidence Act, 1872 ...”

9. The predominant contention of the learned counsel for the petitioner is that the second respondent herein filled up the other columns in Ex.P.1-cheque and Ex.P.3-promissory note. In the cross-examination, the petitioner in unequivocal terms admitted his signatures on Ex.P.1 and Ex.P.3. The burden of proof lies on the petitioner to establish under which circumstances he has issued the cheque and executed the promissory note in favour of the second respondent. Under Section 139 of the N.I. Act, the

⁴ 2008(2) RCR (Criminal) 466

⁵ AIR 2003 P&H 344

Court can draw a presumption that the cheque was issued by the payee in discharge of a legally enforceable debt unless the contrary is proved. A perusal of Section 20 of the N.I. Act clearly demonstrates that if the payee hands over the negotiable instrument with his signature, it would amount to permitting the drawee to fill up the other columns. Whether the second respondent has filled up the other columns in Ex.P.1-cheque or any other person, is purely a disputed question of fact, which can be decided during the course of trial only.

10. As rightly pointed out by the learned counsel for the second respondent, the petitioner has taken mutually self destructive pleas in his defence viz., (1) he lost the cheque in transit, and (2) the second respondent herein has stolen the cheque and promissory note from the house of the petitioner. If really the second respondent has stolen the cheque of the petitioner, what prevented him to lodge a complaint to the police or file a private complaint at least after filing of the complaint by the second respondent. For the reasons best known, the petitioner did not choose to take any steps in this direction. It is needless to say that an opinion given by an expert is not a substantive piece of evidence. The opinion expressed by the expert will not prevail over the substantive evidence adduced by the parties to the proceedings. In the instant case, the petitioner can adduce the evidence to establish whether he lost the cheque in transit or the second respondent herself committed theft of the cheque. The petitioner has not offered explanation much less cogent and convincing explanation, why he has signed the cheques and keep them at his house. No ordinary prudent man will sign on the

blank cheques and keep them in the house. This aspect also negatives the contention of the learned counsel for the petitioner. The various queries raised by the learned counsel for the petitioner involve disputed question of fact, which can be established by way of oral and documentary evidence. In such circumstances, sending of the cheque-Ex.P.1 and promissory note-Ex.P.3 to the expert is no way helpful to the Court to decide the issue involved in this case. The trial court considered all these aspects in right perspective and arrived at a conclusion that the petition is not maintainable.

11. As per the decisions 3 to 5 cited supra, since there exists no facilities to determine the age of the ink with scientific accuracy, sending of document to the Expert for such purpose would result in dragging on the proceedings. Therefore, I find no illegality or irregularity in the order of the trial Court, which warrants interference of this Court. The possibility of filing of this petition at the fag end of the trial to drag on the proceedings cannot be ruled out completely.

12. Having regard to the facts and circumstances of the case, I am of the considered view that it is not a fit case to allow the revision. Hence, the revision lacks merits and *bona fides*.

13. Accordingly, the Criminal Revision Case is dismissed. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

T.SUNIL CHOWDARY, J

Date: 02.01.2017
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