

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No. 12572 OF 2010

ORDER :

The petitioner is the complainant in C.C.No.55 of 2007 pending on the file of the Prl.Junior Civil Judge, Bhimavaram, West Godavari District, for the offences punishable u/sec. 138 of the Negotiable Instruments Act, taken cognizance by the learned Magistrate against the 2nd respondent/Accused. It is during the trial and almost at the fag end of defence evidence, the complainant filed application under Section 45 of the Indian Evidence Act, seeking to send the disputed signatures of the accused contained in Ex.P.9 ledger book and Ex.P.4 and 5 credit bills and Ex.P.7 ledger book and P.10 cheque along with other documents to Government handwriting Expert in Forensic Science Laboratory, Red Hills, Hyderabad, vide CrI.M.P.No.152 of 2010 for comparison and opinion. It is stated that the accused filed CrI.M.P.No.154 of 2009 to send the documents in question to get expert opinion and the same was allowed by sending the documents to one private organization viz; Truth Labs, Hyderabad, and opinion received. The learned Magistrate dismissed the application by the impugned order, dt. 22.10.2010 after hearing both sides and on contest. In the earlier application of accused in CrI.M.P.No.154 of 2009 the Court sent the disputed signatures appearing on Ex.P.9 to the handwriting expert for comparison of the admitted signatures with the admitted signatures on the cash deposit receipt dated 18.05.2002 of HDFC branch, Madhapur and the admitted signatures on the memo of

appearance filed before the Court, and opinion, and it was ordered on 09.04.2009 and the Expert opinion is obtained, dt.07.11.2009 stating disputed signature on the Ex.P.9 ledger book, in question is not that of the person whose admitted signatures and specimen signatures received and the said handwriting expert of Truth Labs was also examined as D.W.1 and also cross-examined at length by the complainant including with reference to Exs.P.9 and Ex.P.10 etc.

It is the contention that the complainant has no confidence on the opinion of the Expert of Truth Labs and thereby another opinion from Government handwriting expert to be called for. The complainant before the lower Court placed reliance on the expression of the Kerala High Court in **Hydru and another Vs. Govindankutty Nair¹** where it is observed that making second reference to handwriting expert without setting aside the report of the first handwriting expert but for the Court has to apply discretion to consider if at all necessary and the lower Court therefrom observed that the case on hand, the complainant did not make any little whisper after received the Truth Labs opinion and reports which is adverse to him and the order passed on the application of the accused in CrI.M.P.No.154 of 2009 after hearing both sides with reference to the counter in sending the documents whatever to be sought. It is also observed by the trial Court that thereby the request can be negated as if the expert opinion of handwriting is not conclusive one on the issue

¹ AIR 1982 Kerala page 49

and it is always open to the parties to raise their objections to the expert opinion including by testing the opinion by cross-examination of the expert and merely because the Truth Labs is a private organization, it cannot be said that there is no confidence on the opinion of the expert of it and thereby dismissed the application.

Even coming to the impugment of the order from the grounds urged and from the oral submissions, there is nothing to say the earlier opinion how not reliable. There is nothing even to show immediately after the opinion received on the application of the accused from the Truth Labs expert supported by reasons, any objections filed and once that opinion is there and the expert witness was also examined as D.W.3, there is nothing to consider in the summary trial case for the offence under Section 138 of the N.I.Act, again on further request of the complainant from his say of the Truth Labs is a private organization and the expert opinion is unreliable and another opinion of Government expert is required to be obtained with reference to the self-same documents. Thereby there is nothing to interfere with the impugned order of the lower Court for this Court while sitting against and even the expression of the Kerala High Court referred by the learned counsel for the petitioner herein no way says invariably it is to be sent but for of such a concession is available if at all when the Court feels it necessary and in that scenario there is nothing interested

much less to consider as exceptional case, which as rightly concluded by the lower Court.

Accordingly and in the result, the Criminal Petition is dismissed by confirming the order of the lower Court in CrI.M.P.No.152 of 2010 in C.C.No.55 of 2007.

Consequently, miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.

Dr.JUSTICE B.SIVA SANKARA RAO

Date:22.08.2017
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