

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
Criminal Revision Case No.2327 OF 2016

ORDER:

The revision petitioner is the accused in C.C.No.207 of 2015 on the file of the III Special Magistrate, L.B.Nagar, Ranga Reddy District, for the offence u/ sec. 138 of the Negotiable Instruments Act, outcome of a private complainant of the defacto-complainant-revision 1st respondent.

2. The revision petitioner at the end of trial filed CrI.M.P.No.1707 of 2016 in the Calander Case supra, u/ sec.45 of the Indian Evidence Act, seeking to refer the Ex.P.1 promissory note, dated 17.11.2013 to forensic laboratory for expert opinion to compare the signature on Ex.P.1 with that of the signatures of the accused to be taken in the open Court.

3. The learned Magistrate supra, after contest from both sides, dismissed the petition holding that if the accused is permitted to subscribe his signatures, he may with a *mala fide* intention change his signature so as not to tally with that of the Ex.P.1. Moreover, the signature on Ex.P.1 is in the year 2013 and after lapse of 3 years i.e. in 2016 if taken, there will be developments in strokes and style may get improved. Even the record does not show that there were contemporaneous signatures of 2013 and the expert opinion is not substantial evidence and observed that the accused is at liberty to cross-examine the witnesses to disprove the execution of the promissory note and also to establish how the cheque was misplaced.

4. Aggrieved by the dismissal order of the learned Magistrate, the accused preferred the present revision saying Ex.P.1 promissory note is a forged one, he did not issue the cheque in question. Without providing opportunity to him, the very next day of counter filed by the

complainant, the learned Magistrate dismissed the petition on erroneous grounds that the impugned order is contrary to law and facts on record, that the reasons assigned by the learned Magistrate are unsustainable, that the observations in view of the lapse of three years period, there will be development in strokes and signature style may be improved is untenable for an expert technically qualified can submit report on this also and it is not the duty of the Court to express its opinion and the only option left to him to disprove his signature is by sending Ex.P.1 to the Expert. The finding of the trial Court that the petition filed belatedly after evidence on both sides is completed is unsustainable. Hence, to set aside the impugned order herein.

5. The learned counsel for revision petitioner reiterated the same, whereas, the learned counsel for the 1st respondent supported the order of lower Court. Heard both sides and perused the material on record including the impugned order.

6. The factual matrix of the case are that out of acquaintance with the accused, the complainant claimed lent an amount of Rs.12,00,000/- to the accused on 17.11.2013 on execution of Ex.P.1 promissory note and on the same day by acknowledging the receipt of amount and orally agreed to repay the same within 6 months. On 02.02.2015 the accused settled the account with the complainant and agreed to pay a total sum of Rs.15,00,000/- including Rs.3,00,000/- towards compensation for causing delay in repayment and accordingly he issued the cheque bearing No.612500 dt.02.02.2015 drawn on State Bank of Hyderabad, Champapet branch in favour of the complainant to discharge his legal liability requesting the complainant to present after one month. On 09.03.2015, the complainant presented the cheque with Rajadhani Co-Operative Urban Bank Limited, R.K.Puram, Kothapet,

Ranga Reddy district and the same was dishonoured with an endorsement as 'Funds insufficient' and the bank issued a return memo dt.10.03.2015. The complainant intimated the same to the accused but he failed to respond. The complainant got issued a statutory legal notice dt.27.03.2015 to the accused under RPAD to repay the cheque amount but the same was returned with an endorsement' the addressee continuously absent and finally returned on 06.04.2015. Hence the complainant filed a private complaint against the accused for intentionally evading repayment for amount due under the cheque.

7. This Court in the recent past in CrI.R.C.No.3204 of 2016 dated 19.01.2017, in T.Rajalingam Vs. State of Telangana elaborately discussed the law in detail and stated that the age of the ink and writing can also possibly be determined and there no time limit can be fixed to file the application and each case depends on its own facts. It is also considered as the valuable right of the defence of the accused in a cheque bouncing case in particular when giving of cheque is in dispute so also of any legally enforceable debt as one of the devices of proving the cheque not duly issued for any legally enforceable debt or any other liability.

8. Having regard to the above and also from the fact that the originality in strokes including habits in pen lift and pen halt etc., will not lose in the signature pattern in three to five years itself and same may not come in the way from the time gap in the signatures in determining the disputed signatures with the admitted signatures and by obtaining specimen signatures to send to the Expert for the opinion with reasons for ultimate appreciation including by examination of the Expert if any.

9. Accordingly and in the result, the impugned order of the lower Court in CrI.M.P.No.1707 of 2016 dismissing the application since unsustainable is set aside and same is allowed by directing the lower Court to obtain specimen signatures of the revision petitioner in open Court and send the disputed signature on the Ex.P.1 promissory note and also cheque if required, with the admitted signatures on record if not including depositions of the handwriting expert for comparison and opinion. For said purpose, the revision petitioner shall deposit before the lower Court towards the expert fee of Rs.10,000/- (Rupees ten thousand only) for the Court ultimately to fix and pay to the expert and to refund if there is any excess amount. Consequently, miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 10.02.2017
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