

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.3021 OF 2017

JUDGMENT:

The present Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is preferred by the petitioner - accused questioning the order dated 23.10.2017 in Criminal M.P. No.1034 of 2017 in C.C. No.1034 of 2017 in C.C. No.101 of 2016 passed by the learned VI Special Magistrate, Hasthinapur, L.B. Nagar, Ranga Reddy District, whereby and whereunder, the learned Magistrate has rejected the request dismissing the application filed under Section 45 of Indian Evidence Act, 1872, for sending Ex.P-7 postal acknowledgment card for comparison of his (accused) signature with Ex.P-1 and P-3 cheques and Ex.P-9 promissory note.

2. Heard Sri K. Laxmaiah, learned counsel for the revision petitioner, and perused the material on record.

3. Learned counsel for the revision petitioner would submit that the request ought not to have been refused as 'fair trial' is the concept of criminal jurisprudence and refusal to send the postal acknowledgment to ascertain the signature thereon as that of the revision petitioner or otherwise would amount to depriving the valuable right of the petitioner defeating the 'fair trial' or denial of

‘fair trial.’ He placed reliance in **Kalyani Baskar (Mrs.) v. M.S. Sampooranam (Mrs.)**¹.

4. What is required to be examined by the expert is signature on postal acknowledgment card marked as Ex.P-7. The plea taken by the revision petitioner is that the notice was not served on him, which is one of the essential ingredients of Section 138 of Negotiable Instruments Act, 1881, and signature thereon was denied by him as belonging to him, and, therefore, he intended to send it for expert examination for tendering opinion.

5. The learned Magistrate would observe that it is quite immaterial as to who received the postal acknowledgment card, as the question is whether legal notice was received at the address sent or not and in this case, complainant has received acknowledgment card on service of legal notice by the postal authorities, and, therefore, there is no point in urging to send Ex.P-7 to the handwriting expert. Likewise, the version of the revision petitioner that the writing on cheques Ex.P-1 and P-3 and on Ex.P-9 promissory note needs to be compared has no force as the respondent never disputed his signatures on Exs.P-1, P-3 and P-9, cheques and promissory note respectively.

6. The stage at which, such a request was made appears to be, when DW.2 was examined and five (5) adjournments were granted for cross-examination and if really, he was intended to send the postal

¹ (2007) 2 SCC 258

acknowledgment for expert's opinion, he would not have kept quite at the inceptive stage i.e., once Ex.P-7 was marked through the evidence of PW.7, and he would have rushed with an application of this nature making such a request. The very fact that he approached the learned Magistrate only after DW.2's evidence is sufficient to reject his request. This apart, as rightly observed by the learned Magistrate, what has to be seen is whether the postal acknowledgment card was received at the address sent or not and in that direction, the entire burden rests only on the complainant.

7. The ruling relied on by the learned counsel for the revision petitioner relates to sending the material document, which was the very cheque disputed by the accused therein and that was the reason why, the Hon'ble Supreme Court insisted the principle of 'fair trial' referred to by the learned counsel. The said judgment cannot be made applicable to the present fact-situation as the promissory note and cheques were not in dispute in the present case. Thus, there is no infirmity in the order passed by the learned Magistrate.

8. Therefore, the Criminal Revision Case is dismissed, at the admission stage itself, confirming the order under challenge.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision case stand closed.

A. SHANKAR NARAYANA, J

December 19, 2017.
PV