

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.12.2018
CORAM:
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CrI.O.P.No.9359 of 2017
and
CrI.M.P.Nos.6481&16361 of 2017

Mr.John Sebastian

..Petitioner

Vs.

Mrs.Jeanette Doyle

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Cr.P.C., to set aside the adjudication order dated 29.04.2017 passed in M.P.No.892 of 2017 in C.C.No.3814 of 2016 by the FTC-II, Metropolitan Magistrate Court, Egmore at Allikulam, Chennai-3.

For Petitioner :Mr.P.Rathnavel

For Respondent :Mr.R.Manickavel

O R D E R

This petition has been filed against the dismissal of the petition filed by the petitioner before the Court below under Section 242 of Code of criminal procedure to send the cheque to the expert, for determination of the correct age of the ink found in the cheque. This petition has been dismissed by the Court below and aggrieved by the same, the present petition has been filed before this Court.

2. The learned counsel for the petitioner would submit that the petitioner is an accused facing criminal complaint before the Court below under Section 138 of the Negotiable Instrument Act. The petitioner has taken a specific defence before the Court below to the extent that the cheque that was given as a security by the petitioner was misused by the respondent and a criminal complaint has been filed. According to the learned counsel for the petitioner, this cheque was given in the year 2012 and the same has been used by the respondent in the year 2016 and therefore, the petitioner wanted to send the cheque for expert opinion in order to determine the age of the ink that is found in the cheque. The learned counsel would submit that the petitioner must be given sufficient opportunity to establish his defence and the Court below went wrong in dismissing the petition filed by the petitioner.

3. Per contra, the learned counsel appearing for the respondent would submit that there is absolutely no scientific method available in order to find out the age of the ink. The learned counsel for the respondent would further submit that the said position has been clarified by several judgements rendered by this Court on the said issue.

4. This court has carefully considered the submissions made on either side.

5. The sum and substance of the submissions made by the learned counsel for the petitioner is that the petitioner had taken a stand that the cheque was given as security in the year 2012 and it was misused by the respondent in the year 2016 and therefore, determination of the age of the ink in the cheque will substantiate the defence taken by the petitioner before the Court below.

6. It is true that sufficient opportunity must be given to the accused who is facing trial for an offence under Section 138 of Negotiable Instrument Act, since the presumption under section 139 of the Negotiable Instrument Act has to be rebutted by the accused person. However, it is important to see as to whether the relief as claimed by the petitioner can be granted by the Court below.

7. The petitioner has sought for an expert opinion in order to determine the age of the ink found in the cheque. There were difference of opinion with regard to the availability of such an expert and varied judgements were given by this Court on this issue. Ultimately one learned Judge took pains to write to the concerned laboratory at Hyderabad in order to determine as to whether any such scientific method is available for the purpose of determining the age of the ink. A report was sent from the laboratory of Hyderabad to the effect that nowhere in India, there is any scientific method for determining the age of the ink.

8. The learned counsel for the petitioner relied upon two judgements of the Hon'ble Supreme Court reported in (2008) 5 Supreme Court Cases 633 [T.Nagappa v. Y.R.Muralidhar and another] and (2007) 2 Supreme Court Cases 258 [Mrs.Kalyani Baskar v. Mrs.M.S.Sampoornam]. Both these judgements do not directly deal with the issues in hand. Both the judgements only reiterate the law that fair and proper opportunity must be given to an accused in order to prove his innocence and denial of such right will amount to denial of fair trial. There is absolutely no dispute

with regard to law enunciated by the Hon'ble Supreme Court in the Judgement referred (Supra).

9. This Court had an opportunity to consider the entire question in detail in the case of [T.Mohanraj Vs. A.Britto Joy] reported in 2018 3 Madras Weekly Criminal (DCC) 16. This Court considered the entire law on the issue and the relevant portion of the Judgement is extracted hereunder:

6. From the above Judgment, it is clear that a learned Single Judge of this Court took pains to ascertain as to whether such a facility is really available at Hyderabad and found that the Forensic Science Laboratory at Hyderabad does not have any expert, who can offer any opinion regarding the age of the ink. Therefore, it is clear that such a facility is not available even in Hyderabad. This Court in the Judgment in Samsudeen v. P.R.Jayanthi, CrI.R.C.No.1035 of 2017, dated 4.8.2017, again went into this question. The relevant portions of the Judgment are extracted here under :

"13. Though it was canvassed by the learned Counsel for the Petitioner, as of now nothing is produced before this Court to state that a particular mechanism is available, where experts are in a position to verify or ascertain the age of the ink used in the documents. When this Court specifically, asked clarification from the Additional Public Prosecutor, M.C. Iyyappa Raj, he would also ascertain that in Tamil Nadu, there is no such institution/mechanism available and also the learned Additional Public Prosecutor for Puducherry, who was also available in the Court, has stated, by way of assisting this Court that, even officials of the Forensic Sciences Department had been summoned by this Court, on an earlier occasion to ascertain whether they have such facility to verify and ascertain the age of the ink, used in documents, they also replied in the negative.

14. Therefore, considering these aspects, this Court finds that the reason stated by the learned Magistrate in dismissing the Petition filed before it is correct and justifiable."

7. From the above Judgments, it is clear that there is no mechanism or any Expert available to find out the age of

the ink. Therefore, the prayer made by the Petitioner is unworkable.

10. From the above, it is clear that there is no scientific method available to get an opinion on the age of the ink. Without the availability of such scientific method, the relief as sought for by the petitioner cannot be given. Therefore this petitioner has to defend his case with the available materials. This Court does not find any ground to interfere with the order passed by the court below.

11. In the result, the Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in CC No.3814 of 2016 on the file of Fast Tract Court II, Metropolitan Magistrate Court, Egmore, within a period of three months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

pds/rka

To

1.The FTC-II,
Metropolitan Magistrate Court,
Egmore at Allikulam,
Chennai-3.

2.The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.P.Rathnavel , Advocate SR.No. 88586
Cr1.O.P.No.9359 of 2017
A.SK(30/01/2019)