

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.166 of 2017

And

Crl.M.P.No.1930 of 2017

K.Sureshkumar

... Petitioner

Vs.

Badhrudheen

... Respondent

Prayer:

Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to set aside the order in C.M.P.No.7477 of 2016 in STC.No.175 of 2016 on the file of the Judicial Magistrate Court (Fast Track Court No.2), Erode dated 21.12.2016.

For Petitioner : Mr.V.Elangovan

For Respondent : No Appearance

O R D E R

This criminal revision has been filed seeking to set aside the order in C.M.P.No.7477 of 2016 in STC.No.175 of 2016 on the file of the Judicial Magistrate Court (Fast Track Court No.2), Erode, dated 21.12.2016.

2.The petitioner is the accused and the respondent is the defacto complainant. For the sake of convenience, the parties will be hereinafter referred to as 'accused' and 'complainant'.

3.The complainant initiated proceedings under Section 138 of the Negotiable Instruments Act in STC.No.175 of 2016 before the learned Judicial Magistrate, Fast Track Court No.2, Erode, against the accused in respect of the Cheque bearing number '334436', dated 09.11.2015 drawn in State Bank of India, Anthiyur Branch. After examination of witnesses, the matter was posted for questioning under Section 313 of Cr.P.C.

4.After completion of questioning under Section 313 of Cr.P.C., the accused filed C.M.P.No.7477 of 2016 in STC.No.175 of 2016 under Section 45 of the Indian Evidence Act seeking to

send the Cheque for Expert opinion. The complainant filed counter in the said petition. Thereafter, the said petition was dismissed on the ground that the request of the accused is not genuine and that the petition has been filed with an intention to drag on the proceedings. Challenging, the same, the present revision has been filed.

5.This Court has ordered notice to the respondent as early as on 09.02.2017. The name of the respondent was also printed in the cause list. Even then, today when the matter is taken up for consideration, there is no representation for the respondent. Hence, this Court decides to take up this matter in the absence of the respondent.

6.The learned counsel appearing for the petitioner would submit that the Cheque is admitted. It was handed over to Gokulakannan Finance for security purpose. Further the said Cheque was mis-used and filled up and handed over to the respondent. Accordingly, the respondent lodged a false case against the petitioner. He would further submit that the signature was put by the petitioner but the other columns were filled up by other persons without the consent of the petitioner. Hence, it is just and necessary to send the Cheque for Expert opinion. Accordingly, the petition was filed.

7.The learned counsel appearing for the petitioner would further submit that the petitioner cross examined P.W.1/ respondent. In his cross examination, the respondent admitted that he has no objection for referring the matter to the Expert opinion. When the respondent himself admitted that he has no objection for sending the Cheque for Expert opinion, the learned Judicial Magistrate has taken a different view, which is not sustainable.

8.It is useful to extract hereunder the relevant portions of the cross examination of P.W.1:

“எதிரி வாசாஆ 1 கோசோலை என்னிடம் பணத்தை பெற்றுக்கொண்டு அன்றைய தினமே என் முன் கையெழுத்து இட்டு கொடுத்தார். காசோலையில் நிரப்பட்ட மற்ற விவரங்கள் யார் நிரப்பினார்கள் என்றால் அவரேதான் நிரப்பினார். எதிரி நிரப்பவில்லை என்றால் சரியல்ல. மேற்படி ஆவணத்தை தடயவியல் ஆய்வகத்திற்கு கையெழுத்து ஒப்பீடு செய்ய அனுப்ப எனக்கு ஆட்சேபணை இல்லை என்றால் சரிதான். எனக்கு காசோலை வழக்குகள் இந்நீதிமன்றத்தில் இதுபோன்று இன்னும் 2 வழக்குகள் உள்ளன. மேற்படி காசோலைகள் 17,00,000 ரூபாய்

நிலுவையில் உள்ளது."

9. In this context, it is also useful to refer hereunder a few decisions of the Hon'ble Supreme Court:

(i) the decision reported in (1996) 2 SCC 704 (O. Bharathan Vs. K. Sudhakaran), the relevant portion of which reads as follows:

"18. The learned Judge in our view was not right either in brushing aside the principles laid down by this Court in AIR 1979 SC 14 (supra) on the ground that it was not a criminal case or taking upon himself the hazardous task of adjudicating upon the genuineness and authenticity of the signatures in question even without the assistance of a skilled and trained person whose services could have been easily availed of. Annulling the verdict of popular will is as much a serious matter of grave concern to the society as enforcement of laws pertaining to criminal offences, if not more. Though it is the province of the expert to act as judge or jury after a scientific comparison of the disputed signatures with admitted signatures, the caution administered by this Court is to the course to be adopted in such situations could not have been ignored unmindful of the serious repercussions arising out of the decision to be ultimately rendered. To quote it has been held in AIR 1979 SC 14 (supra) ;

"The matter can be viewed from another angle also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identify of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other: and the prudent course is to obtain the opinion and assistance of an expert."

(ii) the decision reported in (2003) 3 SCC 583 (Lalit Popli Vs. Canara Bank and others), the relevant portion of which reads as follows:

"12. Sections 45 and 73 of the Indian Evidence Act, 1872 (in short 'the Evidence Act') deal with opinion of experts and comparison of signature, writing or seal with others admitted or proved. Section 45 itself provides that the opinions are relevant facts. It is a general rule that the opinion of witnesses possessing peculiar skill is admissible. There was no challenge to the expertise of V.K. Sakhuja. He deposed to have testified in about ten thousand cases relating to disputed documents. Though the employee highlighted certain adverse remarks, it cannot be lost sight of that they were about four decades back. But we need not go into that aspect in detail as no infirmity in the report acted upon by the authority in the present case was noticed or could be pointed out.

13. It is to be noted that under Sections 45 and 47 of the Evidence Act, the Court has to take a view on the opinion of others, whereas under Section 73 of the said Act, the Court by its own comparison of writings can form its opinion. Evidence of the identity of handwriting is dealt with in three Sections of the Evidence Act. They are Sections 45, 47 and 73. Both under Sections 45 and 47 the evidence is an opinion. In the former case it is by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experiences. In both the cases, the Court is required to satisfy itself by such means as are open to conclude that the opinion may be acted upon. Irrespective of an opinion of the Handwriting Expert, the Court can compare the admitted writing with disputed writing and come to its own independent conclusion. Such exercise of comparison is permissible under Section 73 of the Evidence Act. Ordinarily, Sections 45 and 73 are complementary to each other. Evidence of Handwriting Expert need not be invariably corroborated. It is for the Court to decide whether to accept such an uncorroborated evidence or not. It is clear that even when experts' evidence is not there, Court has power to compare the writings and decide the

matter. [See Murari Lal vs. State of Madhya Pradesh (1980) 1 SCC 704]"

(iii) the decision reported in (1979) 2 SCC 158 (The State (Delhi Administration) vs. Pali Ram), the relevant portion of which reads as follows:

"31. It is not the province of the expert to act as Judge or Jury. As rightly pointed out in Titli v. Jones, the real function of the expert is to put before the Court all the materials, together with reasons which induce him to come to the conclusion, so that the Court, although not an expert may form its own judgment by its own observation of those materials. Ordinarily, it is not proper for the Court to ask the expert to give his finding upon any of the issues, whether of law or fact, because, strictly speaking, such issues are for the Court or jury to determine. The handwriting expert's function is to opine after a scientific comparison of the disputed writing with the proved or admitted writing with regard to the points of similarity and dissimilarity in the two sets of writings. The Court should then compare the handwritings with its own eyes for a proper assessment of the value of the total evidence.

32. In this connection, the observations made by Hidayatullah, J. (as he then was) in Fakhruddin v. State of Madhya Pradesh (ibid) are apposite and may be extracted :

"Both under Sections 45 and 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case, the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become a handwriting expert but to verify the premises of the expert in one case and to appraise the value of the opinion in the other case. The comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in a large measure in the disputed writing. In this way, the opinion of the deponent

whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness."

33. Since even where proof of handwriting which is in nature comparison, exists, a duty is cast on the Court to use its own eyes and mind to compare, the admitted writing with the disputed one to verify and reach its own conclusion, it will not be wrong to say that when a Court seised of a case, directs an accused person present before it to write down a sample writing, such direction in the ultimate analysis, "is for the purpose of enabling the Court to compare" the writing so written with the writing alleged to have been written by such person, within the contemplation of Section 73. That is to say, the words 'for the purpose of enabling the Court to compare' do not exclude the use of such "admitted" or sample writing for comparison with the alleged writing of the accused, by a handwriting expert cited as a witness by any of the parties. Even where no such expert witness is cited or examined by either party, the Court may, if it thinks necessary for the ends of justice, on its own motion, call an expert witness, allow him to compare the sample writing with the alleged writing and thus give his expert assistance to enable the Court to compare the two writings and arrive at a proper conclusion."

(iv) the decision reported in (1980) 1 SCC 704 (Murari Lal Vs. State of Madhya Pradesh), the relevant portion of which reads as follows:

"6. Expert testimony is made relevant by s. 45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion of a person 'specially skilled' 'in questions as to identity of handwriting' is expressly made

a relevant fact. There is nothing in the Evidence Act, as for example like illustration (b) to s. 114 which entitles the Court to presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars which justifies the court in assuming that a handwriting expert's opinion is unworthy of credit unless corroborated. The Evidence Act itself (s.3) tells us that 'a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists'. It is necessary to occasionally remind ourselves of this interpretation clause in the Evidence Act lest we set an artificial standard of proof not warranted by the provisions of the Act. Further, under s. 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to facts of the particular case. It is also to be noticed that s. 46 of the Evidence Act makes facts, not otherwise relevant, relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant. So, corroboration may not invariably be insisted upon before acting on the opinion of handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard and fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it.

12.The argument that the court should not venture to compare writings itself, as it

would thereby assume to itself the role of an expert is entirely without force. Section 73 of the Evidence Act expressly enables the Court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides call experts and two voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the Court to compare the writings and come to its own conclusion. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions they will aid the Court. Where there is none, the Court will have to seek guidance from some authoritative textbook and the Court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence. We may mention that *Shashi Kumar v. Subodh Kumar and Fakhruddin v. State of Madhya Pradesh* (supra) were cases where the Court itself compared the writings."

10. In the present case though the Cheque is not disputed, however, the case of the petitioner is that the Cheque was signed by the petitioner but the other columns were filled by other persons. The decisions cited supra squarely applies to the present case on hand. In view of the contradictory view taken by the petitioner and respondent, it is just and necessary to send the Cheque for Expert opinion.

11. Accordingly, this Court inclined issues the following directions:

(i) The learned Judicial Magistrate (Fast Track Court No.2), Erode is directed to send the instrument to the Deputy Director and Handwriting Expert, Forensic Sciences Laboratory, Kamarajar Road, Chennai, for Expert opinion, within a period of two weeks from the date of receipt of a copy of this order along with the un-disputed signature of the petitioner prior to the date of the instrument.

(ii) The Deputy Director and Handwriting Expert, Forensic

Sciences Laboratory, Kamarajar Road, Chennai, is directed to forward his opinion to the learned Judicial Magistrate (Fast Track Court No.2), Erode, within a period of six weeks from the date of receipt of the instrument for comparison of signature.

(iii)The petitioner is directed to pay a sum of Rs.5,000/- (Rupees Five Thousand Only) as remuneration to the Deputy Director and Handwriting Expert, Forensic Sciences Laboratory, Kamarajar Road, Chennai.

12.This criminal revision is allowed with the above directions. Consequently, the miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate Court
(Fast Track Court No.2), Erode.
2. The Deputy Director and Handwriting Expert,
Forensic Sciences Laboratory,
Kamarajar Road, Chennai.

Copy To

The Section Officer,
Criminal Section, High Court,
Madras.

+1cc to Mr.V.Elangovan, Advocate, S.R.No. 66360

Cr1.R.C.No.166 of 2017
And
Cr1.M.P.No.1930 of 2017

SV (CO)
GN (22/10/2018)