



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2018

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.O.P. (MD) Nos.15094, 14787, 14799 and 14825 of 2018

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T.Mohanraj ... Petitioner in all Crl.O.Ps.

Vs

A.Britto Joy ... Respondent in all Crl.O.Ps.

COMMON PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to set aside the order passed by the Principal Sessions Judge, Kanyakumari at Nagercoil in Cr.R.P.Nos.16, 17, 18 and 19 of 2014 on 26.06.2018.

For Petitioner : Ms.I.Saliy Akhan
(in all Crl.O.Ps)

COMMON ORDER

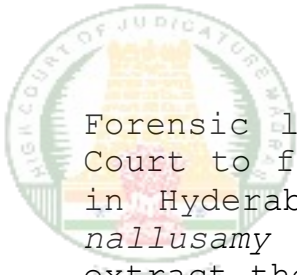
All these petitions have been filed challenging the order of the Court below dismissing the petitions filed by the petitioner to send the cheque in question for opinion to a handwriting expert to ascertain the age of the ink found in the signature.

2.The Court below had dismissed the applications filed by the petitioner mainly on the ground that no such facility is available in any of the laboratories, to find out the age of the ink.

3.The learned counsel for the petitioner would submit that in the present case, the disputed cheque was issued in the year 1992 and the same was used in the very same year itself and the signature found in the cheque was put in the year 1992. According to the learned counsel for the petitioner, the cheque was misused and filled up and has been deposited in the year 2011, which resulted in filing of the complaints under Section 138 of the Negotiable Instrument Act.

4.The learned counsel for the petitioner would submit that since the burden of proof is cast upon the accused under Section 139 of the Negotiable Instrument Act, it is the duty of the accused persons to rebut the said presumption and therefore, sufficient opportunity must be given to the petitioner in order to rebut the presumption.

5. At one point of time, a view prevailed in this Court to the effect that even though the facility to find out the age of the ink is not available in Tamil Nadu, such a facility is available in the



Forensic Laboratory at Hyderabad. An occasion came before this Court to find out as to whether such a facility is really available in Hyderabad. This Court in *Nallathambi (died) and others Vs. nallusamy* went into this issue in detail. It will be relevant to extract the following paragraphs for easy understanding:-

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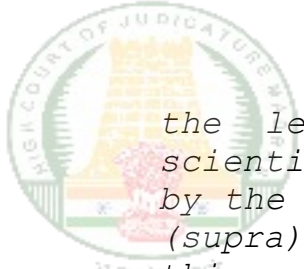
"6. In this context, we will have to see whether the age of the ink can be ascertained in the light of the judgments relied upon by the counsel appearing for both sides. In the judgment *Elumalai Vs. Subbaramani (supra)*, the learned Judge relied upon the Book on Forensic Science in Criminal Investigation and Trials by B.R.Sharma (1999 Edition) and also the judgment of the Honourable Supreme Court in *Shashi Kumar Banerjee Vs. Subodh Kumar Banerjee AIR 1964 SC 529* and held that the document can be sent to ascertain the age of the ink used in the document.

7. In judgment *Shashi Kumar Banerjee Vs. Subodh Kumar Banerjee (supra)*, the Honourable Supreme Court held as follows:-

"Finally we may point out that the expert admitted in his evidence that it was only by a chemical test that it could be definitely stated whether a particular writing was of a particular year or period. He also admitted that he applied no chemical tests in this case. So his opinion cannot on his own showing have that value which it might have had if he had applied a chemical test. Besides we may add that Osborn on "Questioned Documents" at page 464 says even with respect to chemical tests that "the chemical tests to determine the age also, as a rule are a mere excuse to make a guess and furnish no reliable data upon which a definite opinion can be based. In these circumstances, the mere opinion of the expert cannot override the positive evidence of the attesting witnesses in a case like this where there are no suspicious circumstances."

8. The learned judge also relied upon the book "Questioned Documents" by Osborn wherein that author has opined that by conducting certain experiments, the age of the ink can be established. Therefore, the learned Judge came to the conclusion that in *Sashikumar Banerjee's* case, the expert had not offered any opinion as to the age of the ink and he also admitted in evidence that only by chemical test, it can be definitely stated whether a particular writing was of a particular year or period and in that circumstances, the Honourable Supreme Court held as referred to above and held that due to scientific advancement, it may not be difficult to ascertain the age of the ink by using chemical test and allowed the application.

9. In my respectful opinion, having regard to the text referred to in the judgment *Elumalai Vs. Subbaramani (supra)*



the learned Judge proceeded hypothetically that due to scientific advancement, the age of the ink can be determined by the expert. Further, the judgment K.Vairavan Vs. Selvaraj (supra), the learned Judge considered various judgments on this point and also referred to the opinion of the President of Central Forensic Science Laboratory, Hyderabad on this subject and held that there is no expert available in the Central Forensic Sciences Laboratory, Hyderabad to offer any opinion regarding the age of the ink and it is also not known whether the facility is available in any laboratory. The learned Judge, took some pain to find out whether any facility is available in any laboratory to ascertain the age of the ink, and he had occasion to interact with the President of Forensic Science Laboratory, Hyderabad when he came here to deliver a lecture in the Tamil Nadu State Judicial Academy on the subject "disputed document" and after getting his opinion, he held as follows:-

"20. Very recently, the President of Central Forensic Science Laboratory, Hyderabad, Andhra Pradesh State was invited to give a lecture in the Tamil Nadu State Judicial Academy at Chennai on the subject "dispute document". During the course of interaction, a question was posed to him - Is there any expert available for offering opinion regarding the age of the ink used for writing the disputed document?- In categorical terms, he informed that there is no such expert available not only in his laboratory but in any Laboratory throughout the country at present and, therefore, it is not at all possible to offer any opinion regarding the age of the ink used in the disputed document. When a specific query was made during interaction to the President as to what had happened to the documents already sent to his Laboratory seeking such opinion, he said that the said documents were only returned without offering any opinion."

21. Now, in order to ascertain as to whether there is any expert really available in the said laboratory since the request is to send the disputed document to the said laboratory in Hyderabad, this Court through the Registrar called for remarks from the said laboratory in Hyderabad. The Assistant Director and Scientist 'C', Central Forensic Science Laboratory, Hyderabad, has given his remarks through fax message to this Court vide Ref. CFSL(H)DOC/MISC/2012-13 wherein he has stated as follows:-

"This is to submit that as there is no validated method, this laboratory does not undertake the examination for determining the relative/absolute age of the ink of the writings/signature"

From the above fax message from the Central Forensic



Science Laboratory, Hyderabad, it is crystal clear that there is no expert available in the said Laboratory also to offer any opinion regarding the age of the ink".

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 Vs. P.R. Jayanthi*, (CrI.R.C.No.1035 of 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.

8. It is the case of the petitioner that the cheque in question pertains to the year 1992 and the same has been misused in the year 2011. It is open to the petitioner to prove this fact by examining the bank officials of the Bank who had given these cheques by comparing the serial number of the cheque leaves of the year 1992, from the account of the petitioner which he is maintaining in his bank. Even though the petitioner does not have the facility to find out the age of the ink in the cheque, it is open to the petitioner to rebut the presumption by proving his defence in any of the other methods and it is always open to the petitioner to establish his



9. These criminal original petitions are disposed of with the above observations.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar (CS-II)

To

1. The Principal Sessions Judge, Kanyakumari, Nagercoil.

2. The Judicial Magistrate No. II,
Nagercoil.

Through:

The Chief Judicial Magistrate,
Kanyakumari District @ Nagercoil.

+1cc to Mr. I. Saliyakhan, Advocate, SR.No. 80700

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