

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL REVISION CASE No.546 OF 2011

ORDER:

In this criminal revision case, the petitioner/accused challenges the order dated 24.01.2011 in CrI.M.P.No.2050 of 2010 in C.C.No.921 of 2007 passed by the learned III Metropolitan Magistrate (Municipal Mobile Court), Vijayawada, dismissing the petition filed by the petitioner under Section 45 of Indian Evidence Act praying the court to send the Ex.P1 promissory note to the handwriting expert to find out the age of the writings found on the said promissory note.

2. (a) The 2nd respondent/complainant filed C.C.No.921 of 2007 against the petitioner/accused for the offence under Sections 138 and 142 of N.I.Act. His case is that the accused and his wife have jointly borrowed an amount of Rs.1,50,000/- from the complainant on 05.11.2004 and executed a promissory note and after several demands made by complainant, the accused issued a cheque bearing No.188718, dated 05.09.2005 for Rs.1,75,000/- drawn on State Bank of Travancore, Vijayawada Branch, towards part payment of the said promissory note debt. On presentation of the cheque with the banker for collection, the same was dishonoured on 07.12.2005 with an endorsement 'account closed'. After following due process, the complainant filed private complaint under Sections 138 and 142 of N.I.Act.

(b) The accused opposed the complaint allegations. His case is that he was subscriber in the firm M/s.Nallamothu Chit Funds Private Limited, Vijayawada, in which the complainant is the Managing Director. The accused was the highest bidder in the auction conducted in the said chit fund company during 2001. At the time of disbursing the prize amount, the said company obtained two pro-notes and four blank cheques as security for repayment of the subsequent instalments from the accused. Thereafter, the accused discharged the balance chit amount well within time and therefore, he was not liable to pay any amount under the chit transaction. In fact, while obtaining the blank pro-notes and blank cheques, the complainant had assured that those documents will be returned soon after receiving the amounts from the accused, but, he has not returned despite many demands made by the accused. The complainant taking advantage of his position as Managing Director of the Chit Fund Company has obtained those blank cheques and pro-notes from the accused and his wife as security, but, he did not return them. With the help of those documents, he filed the complaint and therefore, petitioner is not liable to pay any amount covered by the documents relied upon by the complainant.

(c) It is the further case of the accused that the promissory note which was marked as Ex.P1 in the criminal case has to

be referred to the expert for his opinion i.e., to determine the age of the ink relating to the signature on the pro-note and also the age of the ink relating to the writings on Ex.P1 for comparison and this exercise, according to the accused, will clinchingly establish the falsity of the complainant's case.

(d) Therefore, the accused filed CrI.M.P.No.2050 of 2010 under Section 45 of Indian Evidence Act. The respondent/complainant opposed the said petition. The trial court observed that, as per the contention of the accused, the signature on the promissory note was in the year 2001 and the writings were of the year 2004. It observed as, the age difference between them was only three years and there is no scientific method which is developed to determine the exact age of the ink and even if such technique exists, expert cannot determine the difference in the ink which is only three to four years and hence, no purpose will be served in referring the document to the expert. The trial court further observed that the petitioner/accused is at liberty to adduce other cogent and concrete evidence to prove his case. On all these observations, the trial court dismissed the petition.

Hence, the criminal revision case.

3. Notice was issued to the 2nd respondent. Though earlier Sri P.Durga Prasad appeared for the 2nd respondent, today, he submitted that he has already given up vakalat for the

2nd respondent and reported no instructions. In these circumstances, heard the learned counsel for petitioner.

4. The point for determination is whether there are merits in the criminal revision case to allow.

5. Seriously fulminating the order of the trial court, learned counsel for petitioner would submit that the trial court mistook the contention of the petitioner and held as if petitioner can prove his case by other means without considering the fact that scientific technology which is available is able to determine the age of the ink in respect of a particular writing. The trial court, therefore, ought to have referred the document to the expert for determining the age difference in the ink between the signature of the petitioner/accused on one hand and other writings of Ex.P1. To buttress his contention that determining the age of the ink by the expert is valuable, he placed reliance on the judgment of this Court in **Namineni Audi Sessaiah v. Numburu Mohan Rao**¹, wherein this Court referred some of the documents therein for age determination.

6. I gave my anxious consideration to the defence contention of the petitioner/accused in the C.C.No.921 of 2007. His case is that he was the highest bidder in the auction conducted by the chit fund company, for which, the complainant is the Managing Director. At the time of giving

¹ C.R.P.No.4656 of 2018, dated 25.09.2018

him the prize amount, the complainant obtained four blank cheques and two pro-notes with his signatures apparently to serve as security for due payment of the instalments. The petitioner/accused, believing the complainant, has given the blank signed cheques and pro-notes and he duly paid the instalments. Those blank signed cheques and pro-notes were obtained by the complainant from the accused and his wife in the year 2001. Though the petitioner/accused regularly paid instalments and there were no dues from him, still the complainant did not return the blank cheques and pro-notes as promised. On the other hand, he created a pro-note with the blank signed pro-note available with him in the year 2004 and also pressed into service a blank cheque which contained his signatures and filed the criminal case. So according to the petitioner/accused if the Ex.P1 pro-note is referred to an expert to find out the age difference in the ink between his signature and other writing in the pro-note, it will clinchingly establish the falsity of the complainant's case and it will also establish that no legally enforceable debt was due from the petitioner/accused to the complainant. It is the contention of the learned counsel for petitioner that the trial court ought to have given an opportunity to establish his defence.

7. In ***Namineni Audi Seshaiyah's case (referred supra)***, learned Judge of this Court, on referring various decisions, allowed the civil revision petition and directed the trial court

to refer the dispute document to an agency called 'Nutron Activation Analysis, BABC, Mumbai', which is a Central Government Organization, where the facility to determine the age of the ink is available. Thus, it is clear that there is a Central Government Agency, which has got requisite expertise to determine the age of the ink of a writing. In my considered view, referring the document to the said Agency will help petitioner/accused to establish his defence. Since the valuable rights of the parties are at stake, the court cannot shun from referring the document to the expert when specifically requested by the party.

8. Accordingly, this criminal revision case is allowed, setting aside the impugned order in CrI.M.P.No.2050 of 2010 in C.C.No.921 of 2007 and the trial court is directed to refer Ex.P1 promissory note to the Nutron Activation Analysis, BABC, Mumbai, a Central Government Organization, for determination of the age of the ink relating to the signature of the petitioner/accused and the age of the ink relating to the other writings in Ex.P1 pro-note and submit its report. Needless to emphasize, the petitioner/accused shall bear the expenditure for the aforesaid exercise.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

24.10.2018
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