

* HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD

+ CrI.R.C.No. 1588 of 2017

%10.12.2018

K. Yougesh Goud.
Petitioner/

..

Accused

Vs.

\$ H. Mohan Krishna
and another
Respondents

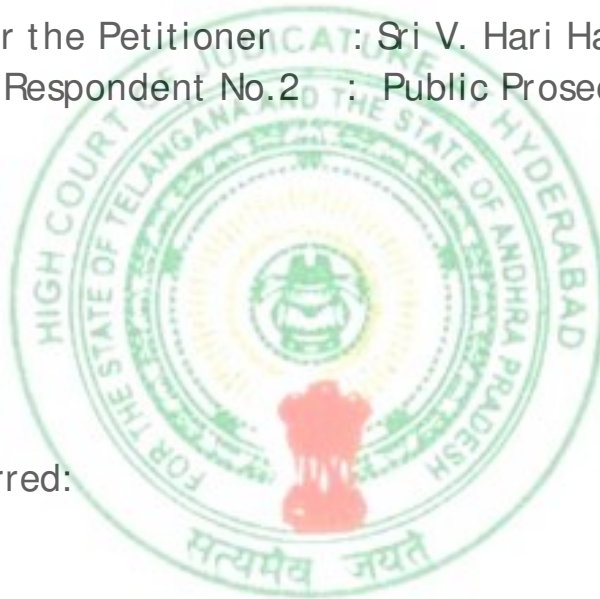
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! Counsel for the Petitioner : Sri V. Hari Haran
Counsel for Respondent No.2 : Public Prosecutor

<Gist :

>Head Note:

? Cases referred:



HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASADCrI.R.C.No. 1588 of 2017JUDGMENT:-

This Criminal Revision Case is arising out of the order dated 12.04.2017 in CrI.M.P.No. 571 of 2017 in C.C.No. 147 of 2015 passed by II Special Magistrate, Hyderabad in a petition filed by the petitioner under Section 45 of the Indian Evidence Act, 1872 (for brevity "the Act") for sending document, Ex.P1 –promissory note to the handwriting expert for comparison of the signatures.

2. The contention of the petitioner is that his signature appearing on page 1 of Ex.P1 does not belong to him and in the 2nd page of Ex.P1 the date 25.12.2012 has been tampered by PW1, with a *malafide* intention. It is the contention of the petitioner that the 1st respondent has fabricated Ex.P1 and filed a false case by using the blank signed cheque. PW1 has denied the suggestions put to him during cross-examination with regard to the tampering of the date and forging the signature, the petitioner indented to send the document to expert for comparison of signature and writing on the cheque. The trial Court has dismissed the said application on the ground that the trial Court itself can compare the signatures under Section 73 of the Act. Being aggrieved by the impugned order, the present Revision Case has been preferred.

3. Heard the learned counsel for the petitioner and perused the material placed on record. The respondent has not appeared even after receipt of the notice, and therefore, there are no arguments advanced on his behalf.

4. The petitioner has served notice on the 1st respondent, but none appeared on his behalf.

5. The points for consideration in this matter are:

- (i) Whether the petitioner is entitled to send the disputed document to the expert for comparison of the signatures and the date on the document?
- (ii) Whether the order passed by the trial Court dismissing the petition on the ground that the trial Court itself intends to compare the signatures under Section 73 of the Act is in accordance with law?

6. The present Revision Case is arising out of the order passed by the learned II Special Magistrate, Hyderabad dismissing the petition filed under Section 45 of the Act for sending the document, Ex.P1 –promissory note for comparison of disputed signature with admitted signatures and about the alteration of the date. On the ground that the trial Court intends to compare the signature under Section 73 of the Act dismissed the said petition.

7. It is appropriate to refer to the provision under Section 73 of the Indian Evidence Act, 1872. As per Section 73

of the Act, in order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose, the Court may direct any person presenting Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

8. No doubt, the Court is entitled to make comparison of disputed and admitted signature for reaching a just conclusion as a rule of prudence. But the trial Court has to record its reasons to reach such conclusion in respect of the comparison of the signatures. It is within the jurisdiction of the Court to instruct a party to submit his writing or signature, enabling the Court to compare and decide a case, and if the instructions are not followed, the Court is free to presume what is most closer to the justice. The said proposition of law was laid down in *Shyam Sundar Chowkhani v. Kajal Kanti Biswas* [(AIR 1999 Gau 101)] and *Ashok Kumar Uttam Chand Shah v. Patel Mohmad Asmal Chanchad* [(AIR1999 Guj. 108)].

9. No doubt, under the law, the Court has power to compare the signatures / handwriting by giving cogent reasons based on the other material and evidence available on record. The said proposition is laid down in *Satish Jayanthilal Shah v. Pankaj Mashruwala* [(1997) 2 Crimes 203 (Guj)].

10. It is appropriate to refer to the scope of Section 45 of the Act at this juncture. Section 45 of the Act reads as under:

“Opinions of Experts:- When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting (or finger impression), the opinions upon that point of persons specially skilled in such foreign law, science or art, (or in questions as to identity of handwriting)(for finger impressions) are relevant facts.

Such persons are called experts.”

11. In view of the above provision, the purport of expert evidence or expert opinion is primarily to assist the Court in arriving at a final conclusion. Such report is not binding upon the Court. If eye-witnesses' evidence and other prosecution evidence are trustworthy, have credence and are consistent with the version given by the eye-witnesses, the Court is well within its jurisdiction to discard the expert opinion. The said proposition is laid in *Dayal Singh v. State of Uttaranchal* [(AIR 2012 SC 3046)].

12. The primary object of sending the document to the expert by the Court is to form an opinion with regard to scientific evidence on finger impressions and the handwriting.

13. The provision under Section 45 of the Act is different from the provision under Section 73 of the Act. Under Section 73 of the Act, the Court may direct any person present in the Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. As far as Section 45 of the Act is concerned, when the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting (or finger impressions), the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting][or finger impressions] are relevant facts, such persons are called experts. Section 45 of the Act clearly reveals that when the Court has to form an opinion about identity of the finger impressions or handwriting, it can take the assistance of the experts. The provision under Section 45 of the Act is totally distinct from the provision under Section 73 of the Act. If the Court wants to compare the signatures, it may direct any person who is present in the Court to write any words or figures which is the purport of the above Section.

14. In the instant case, the petitioner intends to send the disputed signature on the document to the expert for comparison with his admitted signatures. The trial Court, instead of sending the document to the expert, has intended to compare the signatures with a naked eye without any scientific assistance.

15. In view of the decisions referred above in Dayal Singh v. State of Uttaranchal when the petitioner has filed a petition for sending the document to the expert for comparison, the Court may send the document to the expert for his opinion for taking his assistance with regard to the handwriting and finger impressions, rejection of the request of the petitioner for sending the document to the expert on the ground that the Court itself can compare the admitted signatures with the disputed signatures would prejudice the rights of the accused to prove the disputed signatures in the light of the defence raised by him.

16. In view of the foregoing reasons, this is a fit case where the order passed by the trial Court is to be set aside by giving an opportunity to the petitioner to file a petition before the trial Court for sending the document to the expert for comparison under Section 45 of the Act.

17. In the result, the Criminal Revision Case is allowed setting aside the order of the trial Court. The interim order dated 16.06.2017 passed by this Court stands vacated and the trial Court is directed to send the disputed document to the expert for comparison as per the provision contemplated under Section 45 of the Act within one week from the date of receipt of a copy of this order. The trial Court also may compare the signatures under Section 73 of the Act.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

10.12.2018

bcj

GUDISEVA SHYAM PRASAD, J