

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.7972 of 2018

ORDER

This petition is filed under Section 482 Cr.P.C., challenging the order dated 10.04.2018 passed in Crl.M.P.No.937 of 2017 in C.C.No.387 of 2011 passed by the II Additional Judicial Magistrate of First Class, Khammam, dismissing the petition filed under Section 45 of Indian Evidence Act.

2. The first respondent herein lodged a private complaint before the magistrate for the offence under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act') against the petitioner/accused.

3. The petitioner raised a specific plea that the first respondent obtained blank signed cheque and promissory note from her, filled up the blanks subsequently, taking advantage of the said document, a private complaint was filed and therefore, to prove her contention, the opinion of an expert is necessary to determine the age of the writing and ink and requested the Court below to refer the disputed documents i.e., cheque and promissory note, to the expert for opinion. The first respondent/complainant filed counter denying the material allegations, *inter alia*, contending that at this belated stage, it cannot be permitted and he also raised several other contentions. The trial Court dismissed the petition on the ground that the application was filed at belated stage.

4. Aggrieved by the order impugned, the present petition is filed by petitioner to set aside the order and refer the disputed documents to the expert to determine the age of the ink and handwriting so as to enable her to substantiate the evidence in the main C.C. and that dismissal of application on the ground of delay is against the principles laid down by the judgment of the Division Bench of this Court in **Duggineni Seshagiri Rao v. Kothapalli Venkateswara Rao**¹, wherein it was held as under:

“Four things are necessary for an instrument to be a promissory note: 1) It should be in writing; 2) It should have an unconditional undertaking; 3) It should be signed by the maker; and 4) it should be in favour of certain person or to a bearer.

Section 20 makes inchoate stamped instruments legal instruments. The dictionary meaning of ‘inchoate’ is ‘incomplete’. So, incomplete stamped instruments are as good as the instruments mentioned in Section 4 of the Act. Even if one looks to the definition of the ‘promissory note’ under Section 4, one would find that the requirements for making an instrument a promissory note do not contain the requirement of naming a person, it can be given in favour of a certain person or to bearer of the instrument. That makes it clear that, one who is holding the document is the person who derives rights out of that instrument. In other words, it would mean that the document with first three requirements as stated above, should be delivered to the payee, once it is delivered it becomes a promissory note. Name and other particulars can be filled up even at a later stage. When one reads Section 4 in conjunction with Sections 20 and 42 that is the only interpretation that can be placed on the meaning of ‘promissory note’ under Section 4 of the Act. Section 20 lays down that when a person signs and delivers to another person a paper stamped in accordance with law relating to negotiable instrument it becomes a negotiable instrument even if it is wholly blank or written with incomplete particulars. Similarly, Section 42 even recognizes instrument issued in the name of fictitious person to be a valid instrument. Although Section 42 relates to bills but it also accepts that an acceptor of a bill of exchange even if it was in drawn in a fictitious name it would create a genuine claim in favour of the holder. Therefore, even if a negotiable instrument is incomplete it would be a legal instrument provided it satisfies the first three conditions.

Holder of the instrument becomes a bearer of the instrument.”

Their Lordships further held as follows:

“The plaintiff had been able to prove the execution of the document. On the other had, if the document was disputed or

¹ 2001(6) ALT 95 (D.B.)

doubted the onus was on the defendant to show that the document was a forgery because a presumption is in favour of plaintiff under Section 118 of the Negotiable Instruments Act.”

The same view was expressed by the Punjab and Haryana High Court in **Sukhminder Singh Vs. Nirbhai Singh**². Hence, she prayed to set aside the said order.

5. Learned counsel for petitioner Sri Challa Srinivas Reddy, has reiterated the said contentions while placing reliance on the aforesaid judgments. He also placed reliance on the unreported judgment of this Court in Crl.P.No.11342 of 2017 dated 24.04.2018 and based on the principles laid down in the above judgments, he requested this Court to set aside the order and refer the disputed documents to the expert for determination of age of the ink and handwriting.

6. It is case of petitioner that she allegedly handed over the blank signed promissory note and cheque, which were subsequently filled up by the first respondent, and such instruments attract the Section 20 of the Act and that the Division Bench of this Court in **Duggineni Seshagiri Rao's case**, referred supra, held that the document is inchoate document when the petitioner handed over the same to the other, it amounts to giving consent to fill up the blanks and utilise the document and on the ground that it was subsequently filled, the proceedings cannot be quashed. The same view was expressed by the Punjab and Haryana High Court in **Sukhminder**

² AIR 2013 Punjab and Haryana 77

Singh's case, referred supra. But, in the present case, there is no question of forgery of the document.

7. No doubt, the learned Single Judge of this Court took a different view in CrI.P.No.11342 of 2017 dated 24.04.2018 holding that the age of the ink and the handwriting can be determined. This view is contrary to the view taken by the learned Single Judge of this Court in **Polana Jawaharlal Nehru v. Maddirala Prabhakara Reddy** in C.R.P.No.6069 of 2016 and batch, wherein it was held that the age of the ink and the handwriting cannot be decided by the Court. Moreover, in the earlier judgment in **Union of India v. Jyoti Prakash Mitter**³, the Apex Court had an occasion to decide an identical issue to determine the age of a person, who is about to retire as a Judge. In the said case, the respondent requested to send those documents containing his handwriting to the expert. There was some correspondence between the Director of the Central Forensic Institute, Calcutta and the Ministry of Home Affairs. The Commandant of the Institute opined that it was "extremely difficult to solve dating problems in a completely satisfactory manner". He initially sought instructions whether he was at liberty to deface or mutilate the documents, because the "test required could not be made without extracting parts of the documents, but later wrote that the mutilation of documents by the chemical test was not desirable and moreover that by such application it would not be possible to give an absolute date to the document. Thereafter the Director reported on a "limited examination" that could be carried out that it was not possible to give any opinion relating to the age of the

³ 1971 AIR 1093

ink writing on the almanac", but in his view the horoscope could not have been written earlier than 1909, because the paper on which it was written contained bamboo pulp which was not brought into the use by the Titaghur Mills in the manufacture of paper before 1912. The Director said nothing about the age of the ink in which the After consultations between the Ministry of Home Affairs and the Ministry of Law, the Home Ministry sent certain old writings of the year 1904, 1949, 1950 and 1959, and requested the Director to determine the age of the writing of the disputed horoscope and marginal note in the almanac by comparison. The Director on April 17, 1965 wrote that it "was impossible to give any definite opinion by such comparisons particularly when the comparison writings were not made with the same ink on similar paper and not stored under the same conditions as the documents under examination", and that it "will not be possible for a document expert, however reputed he might be, anywhere in the world, to give any definite opinion on the probable date of the horoscope and the ink writing in the margin of the almanac.

8. If these principles applied to the present facts of the case and the other judgment of the learned Single Judge of this Court, it is highly difficult for any expert to give opinion and reference of document to determine the age of the ink and writing is nothing but a futile exercise to protract the proceedings for some time. Therefore, on this ground, the order passed by the Court below cannot be interfered with and is upheld, while dismissing the petition.

9. In the result, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

10th August, 2018

sj

