

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH**

CIVIL REVISION PETITION No.4656 of 2018

Between:

Mr. Namineni Audi Seshaiah

.....Petitioner

and

Mr. Numburu Mohan Rao

.....Respondent

Date of Judgment pronounced on : 25-09-2018

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether The Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

*** HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

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> HEAD NOTE:

! Counsel for the petitioner : Sri Kuriti Bhaskara Rao

^ Counsel for the respondent : Sri Uma Shankar Nemikanti

? Cases referred

1. 2014 (1) ALD 521
2. 2017 Law suit (Hyd) 23 dated 19.01.2017
3. 2016 (3) ALT (Cri.) 397
4. AIR 2008 SC 2010
5. AIR 2006 SC 3366
6. 2008 (4) SCC 54
7. 2010 (11) SCC 441
8. AIR 2003 P&H 344
9. 2015 Lawsuit Mad 807
10. 2011 3 CTC 616
11. 2008(1) Mad. LJ (Cri) 769
12. 2010(2) Mad LJ (Cri) 762
13. 2011 (2) Mad LJ (Cri) 595 at para-32
14. 2011(3) Mad LJ(Cri) 440
15. 2010 (1) CTC 424
16. 2012(5) CTC 596
17. AIR 1964 SC 529 at 537
18. 2010 CrLJ 1510
19. 2016 3 ALT (Cri) 307 at paras 27 to 30
20. 2007 1 SCC (Cri) 577
21. 2016 2 ALT 248
22. 2008 3 ALT 409

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**CIVIL REVISION PETITION No.4656 of 2018****ORDER:**

The revision petitioner is the defendant in OS.No.228 of 2014 on the file of learned V Additional District Judge, Nellore. It is a suit based on 4 pro-notes said to have been executed by the defendant in favour of the plaintiff viz., 2 pro-notes dated 04.02.2012 for Rs.10,00,000/- each and another pro-note of Rs.10,00,000/- on 09.03.2012 and another pro-note of Rs.5,00,000/- on 13.08.2012 and that despite demands having failed to pay having issued cheque bearing No.374451 dated 17.06.2014 of Rs.50,00,000/- towards so called part payment out of it and the cheque later returned dishonoured and thereby entitled to the suit amount claimed of total Rs.58,00,332/- with interest on Rs.35,00,000/- from date of suit and for costs etc., is the sum and substance with supporting averments.

2. The defendant contested by filing written statement by denying the said averments with the say that the defendant never had any such necessity to borrow such huge amounts on the alleged dates. It was in relation to the venture of his son at Bangalore, the plaintiff's son had some disputes and the plaintiff, his son and one Aluru Srinivas Reddy colluded together and created and fabricated the documents referred and relied in the plaint of the present suit and in another suit filed against the defendant's son. The

defendant is an agriculturalist and lives by its income and entitled to the benefit of Act No.4/38 otherwise and there is no cause of action for the suit hence to dismiss. Leave about other contentions, the main contention of defendant is those are fabricated documents to say he never admitted execution of pro-notes and signed or received of amounts thereunder and also giving of cheque in question.

3. In the factual scenario I.A.No.122 of 2018 filed by the defendant before the trial Court under Section 94(e), 151 CPC and Section 45 of the Evidence Act to send the disputed pro-note to an expert to ascertain the age of the ink in the signatures of the petitioner and the recitals in the pro-notes by saying suit claim based on the so called pro-notes are fabricated documents and by misusing the transactions between the plaintiff's son Venkateswara Rao in fabricating the suit pro-notes and thereby those are to be sent to expert to determine the age of the ink found in the signatures of him and of the alleged attestors and the recitals in the body of the pro-notes.

4. The counter filed by the plaintiff in opposing the petition before the trial Court is with contest of the petitioner/defendant borrowed amounts and executed the pro-notes. In the written statement he admitted the signatures but for contentions of plaintiff misused the transactions between the plaintiff and the son of the defendant, the suit pro-notes were executed in the year 2012

and after lapse of 6 years the age of the ink cannot be determined and even if such facility available, it cannot be sent for determination, in the cross examination of the defendant he admitted as DW.1 the signatures on the pro-notes and that he is not in the habit of signing on blank pro-notes and hence there is no need to sent suit pro-note to determine the age of the ink and placed reliance on the expression of this Court in **Kambala Nageswara Rao Vs. Kesana Bala Krishna**¹. The impugned order of the learned trial Judge is in dismissing the application with the observation that the contention of the defendant's counsel of plaintiff fabricated the suit pro-notes by making use of blank signed pro-notes containing the signatures of the defendant in respect of transaction between the plaintiff and son of defendant Venkateswara Rao. It is observed of the contest of other side is there is no procedure to be determined the age of the ink and even if there is such facility it leads to several complications, that the ink might have been manufactured or pen might have been manufactured long back and it was used after long time that is before using the same. Due to lapse of 6 years it is not possible to determine the age of ink as observed in the above expression of **Kambala supra**.

5. It is impugning the same the present revision is filed with the contentions in the grounds of revision the impugned dismissal order of the trial Judge is unsustainable and the

¹ 2014 (1) ALD 521

proposition laid down in the expression of **Kambala supra** no way applicable to the facts on the case of hand as it is the contention of the petitioner/defendant of never borrowed any amount from plaintiff and plaintiff has no capacity to arrange such huge amounts and the so called documents inserted with words on the printed pro-note, the defendant given the pro-note as surety during the business of plaintiff and son of defendant who were doing real estate business at Bangalore. The trial Judge should have been thereby considered the request instead of dismissal more particularly from the written statement contest also for the fact plaintiff admitted in his cross examination as PW.1 of the date of issuance of pro-note and filling of pro-note are not co-relating in seeking thereby to send to expert as necessitated.

6. The respondent even served and proof filed failed to attend. Heard learned counsel for the petitioner and taken as heard to revision respondent/plaintiff.

7. The learned counsel for the petitioner placed reliance on the expression of the Apex Court in **T.Rajalingam @ Sambam v. State of Telangana**² where it is in a cheque bouncing case from the defence of cheques given in the year 2007 and those were time barred and those were tampered by showing as if given in 2012 more than 5 years and thereby documents are to be send to expert for comparison and determination of the age of ink. It is observed that when the

² 2017 Law suit (Hyd) 23 dated 19.01.2017

dispute as to the tampering with antedate and determination of age of ink that is valuable right of accused to establish by defence evidence and once wants to do so as held by this Court in **M/s. S.K. Health Care Formulations Pvt. Ltd v. M/s.Globe Glass Containers**³ relying upon the expression of the Apex Court in **T.Nagappa v. Y.R.Muralidar**⁴; apart from the other settled expression in **M.S.Narayana Menon v. State of Kerala**⁵ relied upon in **Krishna Janardhan Bhat v. Dattatraya G.Hegde**⁶ that was referred and explained by the three Judge Bench in **Rangappa v. Sri Mohan**⁷ in relation to the reverse onus burden on the accused the Court has to afford an opportunity by preponderance of probabilities to rebut the presumptions available against him. It also referred the expression of **Kambala supra** where observed mere determination of age of ink, even there exists any facility for that purpose; cannot, by itself, determine the age of the signature and thereby no purpose be served by sending the disputed cheques which contain the admitted signatures of the accused and also referred the expression of the Punjab and Haryana High Court in **Yash Pal v. Kartar Singh**⁸ held that age of the ink cannot be determined by expert and the expression of the Madras High Court in **A.Inayathulla v.**

³ 2016 (3) ALT (Cr1.) 397

⁴ AIR 2008 SC 2010

⁵ AIR 2006 SC 3366

⁶ 2008 (4) SCC 54

⁷ 2010 (11) SCC 441

⁸ AIR 2003 P&H 344

A.Ramesh⁹, of age of ink is not determinable to consider the application of accused to send the disputed cheque to determine the age of ink. It referred earlier expression in **Elumalai v. Subramani**¹⁰ of it is possible to discover age of the ink from the reputed authors who are experts in the field, however the procedure is to be evolved for experiment with latest technology for achieving improvement on the subject. The Government has to provide necessary latest infrastructures in the Document Division of the Forensic Sciences Laboratory and also allot necessary funds for the constitution of sophisticated laboratory to elect non-destructive technique.

8. In fact in 1964 the Supreme Court rendered decision in **Shashi Kumar Banerjee's Case** saying the expert had stated that the determination of the age of writings and ink could be ascertained definitely by a chemical test and once even prior to 1964, chemical test were in application to find out age of ink. Now, the science in this branch has prospered to considerable dimensions and it cannot hereafter be contended that it is not possible to ascertain the age of the ink by scientific method. In **A.Inayathulla supra** while referring to **Elumalai supra**, referred further **Yash Pal supra** of Punjab High Court that was followed in another Single Judge expression of Madras High Court in **S.Gopal v.**

⁹ 2015 Lawsuit Mad 807

¹⁰ 2011 3 CTC 616

D.Balachandran¹¹, in saying age of the ink cannot be determined by the expert with scientific accuracy even does not mean not at all possible.

9. In **A.Inayathulla supra**, it also referred another expression of the Madras High Court in **V.Makesan v. T.Dhanalakshmi**¹², where in a cheque bouncing case regarding dispute on the age of the ink of no expert in that field to give opinion by adopting any scientific method and also referred other expressions of the Madras High Court in **A.Sivagnana Pandian v. M.Ravichandran**¹³ and **A.Devaraj v. Rajammal**¹⁴, where the Madras High Court took the leaf of the disputed documents to be send to determine the age of the ink to the Central Forensic Department, Hyderabad, by referring to the earlier expression in **R.Jagadeesan v. N.Ayyasamy**¹⁵, which referred earlier expression in **S.Gopal supra** and it is observed in **A.Inayathulla supra** and **A.Devaraj supra**.

10. It is observed in **A.Inayathulla supra**, another expression of the Madras High Court in **K.Vairavan v. Selvaraj**¹⁶, and that though there is scientific method available, there is no expert available who can scientifically examine particularly at the Forensic Science Department of the Government of Tamilnadu. The Central Forensic Sciences

¹¹ 2008(1) Mad. LJ (Cri) 769

¹² 2010(2) Mad LJ (Cri) 762

¹³ 2011 (2) Mad LJ (Cri) 595 at para-32

¹⁴ 2011(3) Mad LJ(Cri) 440

¹⁵ 2010 (1) CTC 424

¹⁶ 2012(5) CTC 596

Laboratory, Hyderabad, expert attended the Tamilnadu Judicial Academy to address the officials also stated that no expert is available there had and the fax message received from Assistant Director of Central Forensic Sciences Laboratory, Hyderabad, of there is no validated method in their laboratory to undertake examination to determine the relative or absolute age of the ink of the writings or signatures. It is observed in **A.Inayathulla supra**, by referring to the expression in **R.Jagadeesan supra** that there is one institution known as Nutron Activation Analysis, BABC, Mumbai, where there is facility to find out the approximate range of the time, during which the writings would have been made and it is a Central Government Organization. It was concluded in **A.Inayathulla supra** therefrom of no purpose that could be served in sending the cheque in question to Government handwriting expert Tamilnadu.

11. In **Rajalingam supra** referring to the above it is observed at Para 10 as follows:

“10. In fact this Court relied upon the Apex Courts expression in **Shashi Kumar Banerjee v. Subodh Kumar Banerjee**¹⁷ observed 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

¹⁷ AIR 1964 SC 529 at 537

applied a chemical test. Besides we may add that Osborn on "Questioned Documents" at p. 464 says even with respect to chemical tests that "the chemical tests to determine 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.

It further observed that the time and place of execution of promissory note in dispute including as to difference in ink, opinion of handwriting expert can be sought for under Section 45 of the Act and such opinion is not totally irrelevant for adjudication of the dispute from the opinion sought for determining the age of the disputed handwriting, it is crystal clear of the handwriting as to the year of writing can be given by expert opinion is the conclusion before the Supreme Court in its approving to consider way back in 1964 and referring to it way back in 1994 this Court held opinion as to age of writing or signature can be sought from the expert. It is no doubt in relation to a civil dispute."

12. From this coming to **Kambala Nageswara Rao** **supra**, what it is observed even facility available on facts no purpose served by referring to the expression of the Karnataka High Court in **Ishwar v. Suresh**¹⁸.

13. It is observed at Para 12 even therefrom once the Apex Court expression is very clear that an expert opinion as to determine the age of writing of ink can be possible and to admit is relevant, it is premature to determine its evidentiary value as whether it can be basis or not and whether to serve as a piece of corroboration and if so to what extent is

¹⁸ 2010 CrLJ 1510

ultimately to be determined from the reasons assigned in the opinion of the expert as even opinion on handwriting is a developing science and not conclusive as reiterated by the Apex Court in the recent expression of the settled law in **SPS Rathore v. CBI**¹⁹.

14. Further in view of the above expression in **A.Inayathulla supra** of no useful purpose can be served or no opinion can be possible are untenable and it is observed at Para 14 that the Apex Court in **Kalyani Baskar v. M.S.Sampoornam**²⁰ having set aside the order of the Magistrate upheld in revision of dismissing the application of the accused in a cheque bouncing case and allowed the request of the accused to send the disputed signatures to handwriting expert saying that is valuable right of defence, unless the Court thinks that the object of the application itself is vexatious or with a delay tactics such request cannot be negated. Further the Full Bench expression of this Court in **Bande Siva Shankara Srinivasa Prasad Vs. Ravi Surya Prakash Babu (died) per L.Rs. and Others**²¹ by referring to earlier Division Bench expression in **Janachaitanya Housing Limited Vs. Divya Financiers**²², observed that non-availability of contemporary relevancy and even from long gap between the admitted and disputed signatures not a ground

¹⁹ 2016 3 ALT (CrI) 307 at paras 27 to 30

²⁰ 2007 1 SCC (CrI) 577

²¹ 2016 2 ALT 248

²² 2008 3 ALT 409

to refuse nor as to any said Rules as to at which stage the application to be filed for each case to be determined on own facts it is thereby ultimately concluded in allowing the revision to entertain the application of accused by the learned Magistrate to send to determine the age of the ink.

15. No doubt there is another earlier single judge expression of this Court in **Takkella Radhakrishnaiah vs. Ganipaineni Nagaraju** in CRP.No.1698 of 2016 dated 23.12.2016 where **Kambala supra** referred besides Madras High Court **R.Jagadeesan supra** among others and stated that in the absence of scientific expert even if the arguments of the petitioner was to be considered on age can be determined for the impracticability involved it cannot be a futile exercise. Same is quoted by the learned selfsame Judge in another CRP.No.1079 of 2017 dated 03.03.2017 and from the said expression the technology is available and in the absence of facility it is a futile exercise.

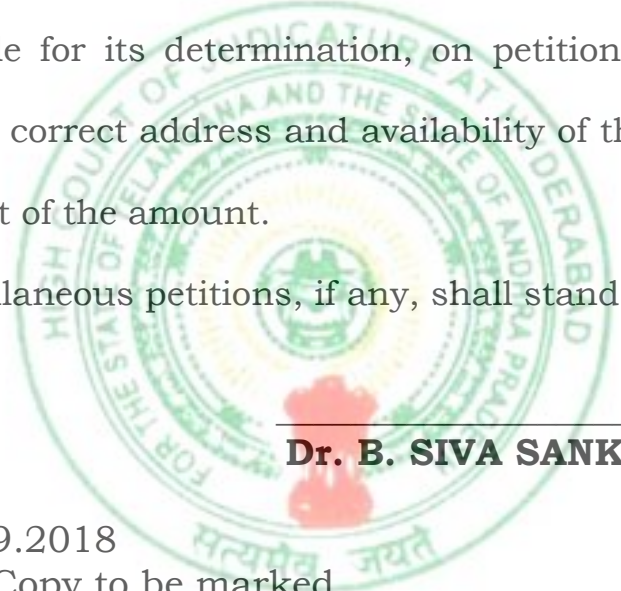
16. As referred in **Rajalingam supra** it is crystal clear of Para 4 of **Inayathulla supra** speaks referring in **Jagadeesan supra** of there is one institution known as Nutron Activation Analysis, BABC, Mumbai where the facility to find out the approximate range of the time during which the writings would have been made and that is also a Central Government Organization.

17. Once such is the case, the facility available and the expert is also available. Thus there is no meaning in arguing

of no practical use or purpose or sending to determine age of the ink is a futile exercise.

18. Having regard to the above, this Civil Revision Petition is allowed by setting aside the order of the lower Court by restoring and allowing the application with a direction to the lower Court to direct the defendant to deposit Rs.20,000/- and send the document to the Nutron Activation Analysis, BABC, Mumbai which is a Central Government Organization where the facility of determination of age of the ink available for its determination, on petitioner's ascertain the full and correct address and availability of the facility and from deposit of the amount.

Miscellaneous petitions, if any, shall stand closed.



Dr. B. SIVA SANKARA RAO, J

Date: 25.09.2018

Note: L.R. Copy to be marked

(B/o)

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