

HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL REVISION CASE No. 2054 OF 2018

ORDER:

1. The petitioner/accused filed this Criminal Revision Case aggrieved by the order dated 26.07.2018 in CrI.M.P.No.870 of 2018 in CC.No.32 of 2017 on the file of learned Special Magistrate, Ibrahimpatnam, Ranga Reddy District, rejecting the request of the petitioner to reopen the case for sending Ex.P.6-promissory note to Handwriting Expert for second opinion. .

2. Learned Counsel for the petitioner/accused mainly contended that there is discrepancy in the evidence and opinion given by the Handwriting Expert and that to ascertain truth or otherwise of the same, it is necessary to send Ex.P.6-Promissory Note to Handwriting Expert for second opinion.

Per contra, learned Counsel appearing for the second respondent/complainant contended that in case of any discrepancy in the evidence of Handwriting Expert who was examined as P.W.3 and in the report given by her, it is open for the petitioner/accused to re-call P.W.3 and get it clarified and that there is no necessity to send Ex.P.6-Promissory note to another Handwriting expert for second opinion.

3. The facts of the case in brief are that: the petitioner herein is the accused in CC.No.32 of 2017 for the offence punishable under Section 138 of Negotiable Instrument Act, who filed an application under Section 45 of the Indian Evidence Act to

send Ex.P.6-Promissory note to Handwriting Expert for second opinion.

When the case is posted for defence evidence, the petitioner/accused filed CrI.M.P.No.1057 of 2017 seeking to send Ex.P.6-Promissory note to the Handwriting Expert for comparison of the signature and the same was allowed by the trial Court and Ex.P.6-Promissory note was sent to the Handwriting Expert-P.W.3, who examined the same and submitted her report, Ex.P.7. Even after receiving the report, Ex.P.7, which is against the petitioner/accused and available on record, the petitioner/accused did not file any application summoning the Handwriting Expert for her evidence. If it is found that there is any such discrepancy in the report, Ex.P.7, it is for the petitioner/accused to summon the Handwriting Expert and examine. But he did not file any petition. On the other hand, as it is axiomatic from the record that the second respondent/complainant filed a petition summoning the Handwriting Expert and she (Handwriting Expert) was examined as P.W.3 and her report was marked as Ex.P.7. It is further axiomatic from the record that even after examining the Handwriting Expert as P.W.3, the second respondent/complainant filed two petitions to reopen the case to recall P.W.1 for further chief examination and accordingly he was examined and Ex.P.8 was marked and he was also cross examined. The petitioner/accused was also further examined under Section 313 Cr.P.C. and he was given opportunity for further defence, but no defence evidence was adduced and when his counsel reported that no further defence, the trial Court closed the defence side evidence. Thereafter, when the case was posted for

arguments, the petitioner/accused filed Crl.M.P.No.871 of 2018 under Section 311 Cr.P.C. to reopen the case and another petition in Crl.M.P.No.870 of 2018 under Section 45 of the Indian Evidence Act to send Ex.P.6-Promissory Note to Handwriting Expert for second opinion on the ground that there is discrepancy in the evidence and opinion given by the Handwriting Expert. It is a fact that P.W.3 is an authorized Government Handwriting Expert, who is fully qualified to examine Ex.P.6 Promissory note and to give report/opinion, Ex.P.7.

4. The trial Court relied on the decision in the case of *KAVETI SARADA Vs VEMINENI HYMAVATHI* {2006(4) ALT 56} and observed that if really there is discrepancy in the evidence of P.W.3- Handwriting Expert and opinion-Ex.P.7 given by her, the same can be put forth in the arguments to be advanced and it would be considered by the trial Court. The settled principle of law is that the opinion of Handwriting Expert is a piece of evidence which requires to be corroborated by any other supporting evidence. Though there is no hard and fast rule that expert examination cannot be resorted to a second time, it would have to be in compelling circumstances and after a finding that the first expert examination is unreliable or unworthy of acceptance; without securing such a finding, a litigant cannot be permitted to seek multiple expert examinations of disputed signatures until he secures a favourable report. As already discussed herein above, if really the petitioner/accused found any discrepancy in the evidence of P.W.3 and report Ex.P.7 given by her, the course left open to him is, to recall P.W.3, for examination-in-chief or cross examination to test the veracity of opinion Ex.P.7. Unless and until the same is done and the Court comes to a

conclusion that the opinion of Expert is unworthy, the disputed document (Ex.P.6) cannot be sent to expert for second opinion. In the case on hand, the matter is posted to arguments. When the report received was found against the petitioner/accused, he did not choose to file an application summoning the Expert for her evidence nor did he avail opportunity afforded for further defence evidence when he was further examined under Section 313 Cr.P.C. It is only when the case is posted for arguments, he filed the present applications to reopen the case and send Ex.P.6 Promissory note to Handwriting Expert for second opinion. The same is nothing but only to protract the litigation. The trial Court is perfectly right in dismissing the application.

5. For the foregoing discussion, I am of the considered view that the findings and conclusions arrived at by the trial Court are valid and legal and do not suffer from any legal infirmities.

6. In the result, the Criminal Revision Case is dismissed while confirming the order dated 26.07.2018 in CrI.M.P.No.870 of 2018 in CC.No.32 of 2017 on the file of learned Special Magistrate, Ibrahimpatnam, Ranga Reddy District.

7. Miscellaneous petitions pending consideration if any in the Criminal Revision Case shall stand closed in consequence.

JUSTICE N. BALAYOGI

Dated 7th September, 2018.
Note. CC in two days
(BO)
Msnr_x