

HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE No.2999 of 2018

ORDER:

This revision is arising out of the order dated 16.10.2018 in CrI.M.P.No.1345 of 2018 in C.C.No.68 of 2018 on the file of Special Magistrate, Ibrahimpatnam, Ranga Reddy District.

2. The revision petitioner is the accused in C.C.No.68 of 2018 registered on the complaint of the 1st respondent herein. The 1st respondent has filed a private complaint under Section 200 Cr.P.C., for the offences punishable under Section 142 of the Negotiable Instruments Act, 1881. The C.C. is pending on the file of learned Special Magistrate, Ibrahimpatnam.

3. During pendency of the C.C, the petitioner has filed a petition in CrI.M.P.No.1345 of 2018 under Section 45 of the Indian Evidence Act, seeking permission of the trial Court for sending the document to the expert for comparison. The learned trial Court Judge has dismissed the petition observing that as per the version of PW1 in his cross he advanced Rs.6,00,000/- to the accused on 22.01.2016 at his house, after receiving Rs.6,00,000/- the accused executed Ex.P1 Hamipatram along with stamped

receipt and also given Ex.P2 cheque for Rs.6,00,000/- filled by the accused himself, and signed by him. On perusal of the contents of Ex.P1, the accused mentioned the cheque number as 733935 which is marked as Ex.P2. If really the cheque was stolen by respondent-complainant, the cheque number should not have been mentioned in Ex.P1. Further the petitioner accused is not disputing his signature on Ex.P1, and enclosed receipt and disputing his signature on Ex.P2 only. The trial Court further observed that under Section 73 of the Indian Evidence Act, the Court has got powers to compare the signature of the accused. Therefore, the trial Court came to the conclusion that there is no necessity to send the document Ex.P2 cheque to handwriting expert and the petitioner is trying to drag on the matter to delay the proceedings.

4. The observations made by the learned trial Court Judge are subject to the merits of the case. This Court is not inclined to go into the merits of the case, as the trial Court intends to avail the provision under Section 73 of the Indian Evidence Act, for comparison of disputed signatures with admitted signatures, and come to its own conclusion. The trial Court is at liberty to avail the provision under Section 73 of the Indian Evidence Act.

Learned counsel for the petitioner has not raised any objection for the said proposition of law and also for comparison of the same by the learned Magistrate. The endeavour of the learned counsel for the petitioner is that the petitioner is denying the signatures on the disputed cheque and the very case of the petitioner is that the cheque was stolen from his house. In fact, it is premature to consider the objections raised by the learned counsel for the petitioner as they are questions of fact to be considered in the suit. The trial Court has already made an observation that it wants to exercise powers under Section 73 of the Indian Evidence Act for comparison of the signatures. The said comparison under Section 73 of the Indian Evidence Act has not yet been done by the trial Court. At this fluid stage of the case, this Court is not inclined to pass any orders to direct the trial Court to send the cheque to the expert.

5. The question that arise for consideration in this petition is whether the trial Court can compare signatures, when the defendant has taken a plea of forgery. Certainly the trial Court has power to compare the signatures as per Section 73 of the Indian Evidence Act.

6. In **K.S.Satyanarayana v. V.R.Narayana Rao**¹, the trial Court has compared the signatures under Section 73 of the Indian Evidence Act when the defendant disputed the signatures on various other documents and also on vakalatnama and written statement.

7. In view of the provision under Section 73 of the Indian Evidence Act, and in the light of above clauses, the trial Court can compare the disputed signatures and can arrive at its own findings.

8. The discretion of trial Court in comparing of signatures under Section 73 of the Evidence Act cannot be interfered with. If the Court, after comparing the signatures, comes to a conclusion that the signatures have to be sent to expert for opinion, may consider the application of petitioner and pass appropriate orders.

9. With these observations, the revision petition is disposed of. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

05th November, 2018
KSM

¹ 1999 (6) SCC 104

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