

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**CRIMINAL REVISION CASE No.2896 OF 2017**

**JUDGMENT:**

The petitioner - accused in Criminal M.P. Nos.3436 and 3435 of 2017 in C.C. No.67 of 2015 on the file of the I Special Magistrate, Hyderabad, preferred the present Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code'), questioning the order, dated 09-10-2017, by which, the requests to reopen the Calendar Case for the purpose of sending Exs.P-1 and P-7 to Hand-writing Expert for his analysis and opinion filed under Section 311 of the Code and other petition under Section 45 of the Indian Evidence Act, 1872 (For short 'Act, 1872'), were refused, dismissing both the applications by a common order.

2. Heard Sri D. Bhaskar Reddy, learned counsel for the revision petitioner. There was no representation for respondent No.1 - complainant.

3. The learned counsel for the revision petitioner would submit that Ex.P-1 - Cheque is materially altered without the consent of the revision petitioner and, therefore, it is void under Section 87 of the Negotiable Instruments Act, 1881, and though, the opinion is not conclusive, but it would aid the Court to come to a correct conclusion, and more particularly, when PWs.1 and 2 have given a different versions in regard to alteration found on Ex.P1 and the Court below,

therefore, was wrong in rejecting the requests dismissing both the applications.

i) The learned counsel also placed reliance in **T. Rajalingam v. State of Telangana,through rep.by Public Prosecutor, High Court of Telangana and Andhra Pradesh, Hyderabad and another<sup>1</sup>**, rendered by a Single Judge of this Court to support his submission that there is no time limit for sending the document to expert containing a disputed signature or writing etc., for determination of age of ink. The learned counsel would lay emphasis on the observations made by this Court contained in paragraph Nos.12 and 14 thus:

“12. Even there from, as per the two earlier expressions of this Court referring that of the Apex Court, it clearly shows that an expert opinion as to determine the age of writing of ink can be possible and to admit is relevant. Once such is the case it is premature to determine its evidentiary value is whether it can be basis or not but for a piece of corroboration and to what extent is 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* 2016 (3) ALT (Cri) 307 (SC) at paras 27 to 30.

14. In fact the Apex Court in *Kalyani Baskar v. M.S. Sampooram* 2007 (1) SCC (Crl.) 577 having set aside the order of the Magistrate upheld in revision of dismissing the

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<sup>1</sup>. 2017 (3) ALT (Crl.) 203 (AP)

application of the accused in a cheque bouncing case and allowed the request of the accused to send the disputed signatures to handwriting expert in saying once the accused requests to send the cheque in question for hand writing expert for opinion after closure of the evidence, the Magistrate should have been granted such a request being the valuable right in defence, unless the Court thinks that the object of the application itself is vexatious or with a delay tactics. Here, from the impugned order of the Magistrate it is not such an observation.”

But, the fact-situation occurring in the said case is not akin to the one occurring in the present case. The cheques disputed therein were marked as Exs.P1 and P2 said to have given in the year 2007 and the same were alleged to have tampered making the year as ‘2012’ in place of ‘2007’. The Photostat copies of original cheques were marked as Exs.D-1 and D-2 relating to Exs.P1 and P2 which would show the year as 2007, thus, there was material alteration of the year. Precisely, the request made therein was to determine the age of the ink. Thus, an application was filed. In the case at hand, it is not as though there are Photostat copies from the side of the revision petitioner, though, the revision petitioner states that there has been material alteration in the month mentioned in the cheque - Ex.P1. But, there are no corresponding Photostat copies thereof occurring in the present case. Thus, in the ruling referred to, the revision petitioners were successful in demonstrating the alteration of the year, at least tentatively, which is not so in the present case.

ii) This apart, certain probabilities certainly, stand against the revision petitioner herein which arise from the conduct of the revision petitioner.

iii) Before advertng to the said conduct of the revision petitioner, it would be appropriate to refer to the ruling in **Kalyani Baskar (Mrs.) v. M.S. Sampooram (Mrs.)**<sup>2</sup>, relied on by the learned counsel for the revision petitioner to support his submission that a fair trial would include proper opportunity being given to the revision petitioner to prove his innocence and denial of that right means denial of fair trial and, therefore, sought to set aside the impugned order and allow the revision.

4. The patent defect in the present case cannot be overlooked. The revision petitioner, in fact, made two applications before the Court below. For convenience sake, the learned Magistrate disposed of both the applications by a common order. The purpose of filing two distinct applications has been different. One is for reopening the case under Section 311 of the Code. The other is for securing the opinion of an Expert under Section 45 of the Act, 1872. Though, a common order was passed by the learned Magistrate, the revision petitioner, in fact, ought to prefer two distinct revisions, but not one revision case and seek reliefs. It appears, since the first application is to reopen the Calendar Case filed under Section 311 of the Code. A

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<sup>2</sup>. (2007) 2 SCC 258

revisional power under Sections 397 and 401 of the Code is not available, if the law declared by the Hon'ble Supreme Court in **Sethuraman v. Rajamanickam**<sup>3</sup> is applied. It appears, only to circumvent the same, the present Criminal Revision Case is filed giving an impression that as if the revision case is preferred against the order one passed under Section 45 of the Act, 1872.

5. Now, turning to the ruling in **Kalyani Baskar**<sup>2</sup>, it is no doubt true, that the concept of 'fair trial' cannot be given a go-by, but, however, one-thing cannot be sidelined or ignored. The revision petitioner, in fact, had the opportunity right from the beginning to make the application under Section 45 of the Act, 1872, but he did not avail of that opportunity at an appropriate stage. No doubt, the learned counsel placed reliance in **T. Rajalingam**<sup>1</sup>, where the learned Single Judge of this Court held that there is no time limit to prefer Criminal Revision Case. But, the question again is, the very application for reopening the case filed under Section 311 of the Code was dismissed though, simultaneously the petition under Section 45 of the Act, 1872, is filed. Now, looking at the order passed by the learned Magistrate, the reason assigned in rejecting the request cannot be by-passed. The stage, at which, both the applications were filed was when the Calendar Case was coming up for defence arguments. The arguments on behalf of the complainant were already heard and the main case was posted for defence arguments twice according to

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<sup>3</sup>. (2009) 5 SCC 153

the order. The learned Magistrate expressed opinion that after the case of the complainant was unwrapped, those two applications were filed. The learned Magistrate also observed that in the cross-examination of PWs.1 and 2 touching signatures on Exs.P1 and P7, answers were elicited and under Section 73 of the Act, 1872, it has got necessary power to examine the signatures which were disputed by either of the parties. The learned Magistrate relied on a decision in **S. Harshavardhan Reddy v. Vemula Ram Reddy**<sup>4</sup> and extracted the expression that there is no reason for the complainant to have waited till completion of evidence and filed application at his leisure after entire evidence was closed, when the stand of the opposite party was very much known to a party and, thus, dismissed both the applications.

6. Thus, it cannot be said that the learned Magistrate has given a go-by to right of 'fair trial' for the reason that the revision petitioner having kept quite all through, and when he was required to tender arguments that too having taken two adjournments, then came up with the two applications, one under Section 311 of the Code and the other under Section 45 of the Act, 1872, and when both the applications were dismissed by a common order, he prefers only one revision instead of preferring two revisions, one against rejection of request under Section 311 of the Code and the other for rejection of request under Section 45 of the Act, 1872, and the law laid down by the

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<sup>4</sup>. 2014 (6) ALD 114

Hon'ble Supreme Court in **Sethuraman**<sup>3</sup> is applied, certainly, the present request cannot be acceded to.

7. Hence, the Criminal Revision Case is dismissed. But, however, the learned Magistrate is directed to dispose of the Calendar Case as early as possible uninfluenced by any of the observations made hereinabove.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the criminal revision case, stand closed.

**January 03, 2018.**  
Mgr

**A. SHANKAR NARAYANA, J**

