

HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.2768 of 2017

ORDER:

Heard the learned counsel for the petitioner as well as the second respondent.

2. The present revision case is filed questioning the orders dated 11.10.2017, passed in CrI.M.P.No.2049 of 2017 in C.C.No. 32 of 2016 on the file of the Special Judicial Magistrate of First Class (Excise), Euru, dismissing the petition filed under Section 45 of the Indian Evidence Act.

3. The facts in brief are that the petitioner herein is charged for the offence under Section 138 of the Negotiable Instruments Act. The case of the second respondent i.e. the complainant is that on 15.05.2012 the petitioner borrowed an amount of Rs.6 lakhs for the purpose of his business and family necessities from him and in lieu of the same, he paid the said amount by way of cheque bearing No. 919262 drawn on State Bank of Hyderabad, payable at Euru. On the same day, the petitioner executed a promissory note in favour of the second respondent agreeing to repay the said amount with interest at 2% per month compounded with yearly rests. In spite of several demands, the petitioner failed to pay the said amount and finally issued a cheque bearing No.065078 dated 13.08.2012 for a sum of Rs.6,20,000/- drawn on Central Bank of India, at Euru as part payment of the said loan. When the said cheque was presented, the same was returned with an endorsement 'insufficient funds' vide cheque return memo dated 03.10.2012. The second

respondent after complying with the mandatory procedure relating to issuance of legal notice, and non-payment of the said amount within 15 days, filed a complaint vide C.C.No.32 of 2016. During the trial, the second respondent himself examined as PW-1 and got marked Exs:P-1 to P-6 and examined another witness who is the attesor on Ex.P-5 promissory note as PW-2. Thereafter, the petitioner was examined under Section 313 Cr.P.C. with regard to the incriminating material appearing in the evidence of the prosecution witnesses and the petitioner denied the same. At that stage, the matter was posted for defence on 17.08.2017. However, it appears that the petitioner has taken time without adducing any evidence and in fact, on 12.09.2017 the matter was adjourned to 19.09.2017 on payment of costs of Rs.500/-. After paying the costs, the petitioner filed the present petition vide CrI.M.P.No.2049 of 2017 under Section 45 of the Indian Evidence Act seeking to send Ex:P-1 cheque dated 13.08.2012 along with the specimen handwriting of the petitioner/accused to the handwriting expert to determine whether the writings on Ex.B-1 is that of the petitioner or not. The second respondent filed counter denying the averments mentioned in the above said petition and contended *inter alia* that the amount of Rs.6 lakhs as mentioned in the promissory note dated 15.05.2012 i.e. Ex.B-5, was paid to the petitioner by way of cheque bearing No.919262 drawn on State Bank of Hyderabad, at Euru. To prove that the said amount has been paid to the petitioner, the second respondent filed the statement of bank account vide Ex.P-6 evidencing that the amount was paid to the petitioner on 15.05.2012. After hearing, the said petition came to be dismissed by

orders dated 11.10.2017. Aggrieved by the said orders, the present criminal revision case is filed.

4. Learned counsel appearing for the petitioner, strenuously contended that the second respondent in his cross examination, admitted that there is difference of writing style of the words between the signature and the contents of Ex.P-1. The handwriting appeared on the cheque is not that of himself and the same is fabricated. Therefore, it is essential to send the document to the handwriting expert. Unless Ex.P-1 is referred to an handwriting expert, the petitioner will be put to great hardship since the second respondent is a utter stranger to him and he never borrowed any amounts much less the amount of Rs.6 lakhs mentioned in the promissory note dated 15.05.2012 and he never executed any promissory note much less the original of Ex.P-5 and equally the cheque dated 13.08.2012. In order to substantiate his contention, he relied on decisions reported in *T. NAGAPPA v. Y.R. MURALIDHAR*¹ and *SURVIKA DISTRIBUTORS PVT. LTD. v. S.R. RETAIL ZONE PVT. LTD.*².

5. Per contra, the learned counsel appearing for the second respondent, supported the impugned orders and contended that when the petitioner has not disputed the signature on Ex.P-1 cheque, there is no hard and fast rule that the contents of the cheque shall be filled by the signatory only under law. The learned counsel also contended that the petitioner has not taken any specific defence as to how Ex.P-1 came into the custody of the

¹ (2008) 5 SCC 633

² 2018 SCC ONLINE ORI 92

second respondent. Merely relying on the stray sentence in the cross examination, the present petition, is not maintainable.

6. Having heard both the counsel and from the perusal of the material on record, it is revealed that the second respondent filed C.C.No.32 of 2016 against the petitioner for the offence under Section 138 of the Negotiable Instruments Act. In the said calendar case, the second respondent has completed his evidence and when the matter is coming up for defence, the petitioner filed CrI.M.P.No.2049 of 2017 under Section 45 of the Indian Evidence Act seeking to send the original of Ex.P-1 cheque, dated 13.08.2012 along with the specimen handwriting of the petitioner to an handwriting expert to determine whether the writing appeared in Ex.P-1 is that of himself or not. After hearing, the said petition came to be dismissed by orders dated 11.10.2017.

7. The point that arises for consideration is as to whether Ex.P-1 cheque can be referred to the handwriting expert to ascertain the writings on Ex.P-1 cheque is that of the petitioner or not. A close perusal of the material on record including the impugned orders, the sole basis for filing the petition under Section 45 of the Indian Evidence Act is that there is admission on the part of the second respondent to the effect that there is a difference of writing style of the words between the signature and the contents of Ex.P-1. Except the said one stray sentence, the petitioner has not taken any specific defence as to how Ex.P-1 cheque came into the custody of the second respondent. On the other hand, it is the specific case of the second respondent that on 15.05.2012 the

petitioner borrowed an amount of Rs.6 lakhs from him for his business and family necessities under a promissory note dated 15.5.2012 and the said amount has been paid to the petitioner by the second respondent by way of cheque bearing No. 919262 drawn on State Bank of Hyderabad, Eluru and the same is evident from Ex.P-6 statement of bank account of the second respondent. Some of the portions of the cross examination, which are necessary to adjudicate the issue on hand are as follows:

"It is not true to suggest that the accused did not issue Ex.P-1 cheque by filling the date and columns also. The witness adds that the accused gave filled in cheque and asked me to verify the name and amount. After verifying the said name and amount in the cheque Ex.P-1, the accused signed on Ex.P-1 cheque before me.

It is not true to say that there is difference in writing between the contents of Ex.P-1 and the signature thereon and that they were written in different pens. It is not true to say that the contents of Ex.P-1 are not the handwritings of the accused. Witness voluntarily acts that the contents of Ex.P-1 are in the handwriting of accused. It is true that there is difference of writing style of the words between the signature and the contents of Ex.P-1."

8. From the entire cross examination of PW-1, there is no specific denial either in the cross examination of PW-1 or PW-2 that the signature on Ex.P-1 cheque is not that of second respondent. The suggestion given to the second respondent that the petitioner never issued Ex.P-1 cheque was also denied. It is also relevant to mention that though it is not mandatory to issue a reply to the legal notice, in the case on hand, the petitioner has not issued any reply to the legal notice i.e. Ex.P-3 to show about his defence. In the

cross examination itself the second respondent categorically denied the suggestion that there is difference in writing between the contents of Ex.B-1 and the signature thereon and that they were written with different pens as stated supra. The second respondent also volunteered that the contents of Ex.P-1 are in the handwriting of the petitioner. When such is the tenor of the cross examination, relying on one sentence that there is difference of writing style of words between signature and the contents of Ex.P-1, a petition filed to refer Ex.P-1 cheque to handwriting expert cannot be maintained. Admittedly no suggestion is given that the petitioner has not signed Ex.P-1 cheque. Therefore, in view of the peculiar facts and circumstances available in this case relating to establishment of payment of Rs.6 lakhs to the petitioner under Ex.P-5 through cheque bearing No.919262 drawn on State Bank of Hyderabad, Euru by the second respondent and Ex.P-6, statement of account of the second respondent evidencing that an amount of Rs.6 lakhs was paid to the petitioner on 15.05.2012. That apart, even in the entire cross examination, no suggestion is given to the second respondent that he is a total stranger to the petitioner herein and he never borrowed any amounts much less the amounts under Ex.P-1.

9. In fact, the judgments relied on by the learned counsel for the petitioner, are not applicable to the facts of the present case since the factum of payment of money is established and signing on Ex.P-1 is not denied. In the above said referred cases, issuance of cheque was not in dispute. But, in the case on hand, the petitioner has come up with a theory that the second respondent is totally a

stranger to him and he never borrowed any amounts. However, for the reasons best known to the petitioner, no suggestion has been given with reference to Ex.P-6 i.e. the statement of bank account of the second respondent evidencing payment of Rs.6 lakhs to the petitioner. As such, on appreciation of the facts available, this Court is of the opinion that there are no merits in the criminal revision case and the same is liable to be dismissed.

10. Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

Date:10.12.2018.
CCM



P. KESHA VA RAO, J

HONOURABLE SRI JUSTICE P. KESHA VA RAO



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