

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.24604 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the order dated 18.12.2017 in CrI.M.P.No.301 of 2017 in C.C.No.27 of 2012 passed by the Principal Junior Civil Judge, Nandigama directing the petitioner to appear before the Court to obtain specimen signatures and send the sample handwriting and disputed signatures to handwriting expert for comparison by exercising power under Section 311-A Cr.P.C.

2. The 2nd respondent is the complainant and petitioner is A2 before the trial Court, they will hereinafter be referred as complainant and accused.

3. The 2nd respondent/complainant filed a petition under Section 311-A Cr.P.C. and Sections 45 and 73 of the Indian Evidence Act alleging that A2-Gurram Venkata Subbaiah impersonated him and executed a document, which is the disputed question of fact in the main calendar case and the signature of A2 is to be obtained in the open Court for the purpose of sending the same to the Government handwriting expert of A.P. Forensic Laboratory at Hyderabad, to compare with the signature found on the document dated 18.04.1998, marked as Ex.P.5 and no objection certificate alleged to have been issued by the complainant in favour of A1 in respect of Tractor bearing No. AP 16 T 3923 and Form 35 two pages said to have been signed and issued by the complainant. It is also contended that the signatures on Exs.P.5 to 7 are forged and fabricated by A2 in criminal conspiracy with A1 and that Ex.P.13, which is a public document and served copy of extract of

'C' book relating to Tractor bearing No. AP 16 T 3923 discloses that the hypothecation of vehicle with Gurram Nagaiah Automobile Finance was in force by the date of registration on 12.04.2016 at RTO, Vijayawada. Therefore, the case of the complainant is that it is essential to obtained signatures of A2 in the open Court so as to prove his specific case that A2 signed as Gurram Nagaiah on the document in dispute and thereby committed offences of forgery and fabrication of documents.

4. A2 opposed the same by filing counter and the same was adopted by A1. It is contended that the complainant filed CrI.M.P.No.190 of 2006 before the Judicial Magistrate of First Class, Nandigama and the same was dismissed after hearing both sides. Therefore, the complainant filed CrI.R.P.No.67 of 2016 before the XVI Additional District and Sessions Judge, Nandigama against the dismissal order in CrI.M.P.No.190 of 2006 and that the said CrI.R.P. was allowed setting aside the order passed by the Magistrate. Against which the complainant filed CrI.P.No.2619 of 2016 and the same was disposed of on 31.01.2017 on merits before admission. In the said order, no specific direction was given by this Court to obtain the specimen signatures of A2 as Gurram Nagaiah for comparison with the admitted signatures and that the parties are bound to obey the same not only as per Sections 73 and 45 of the Indian Evidence Act, but also Section 311-A Cr.P.C.

5. Considering the submissions made by both sides regarding sending of admitted signatures with disputed signatures to the handwriting expert, this Court observed in CrI.P.No.2619 of 2016 as under:

“Insofar as the direction of the Court below that the accused subscribing of the specimen signatures in the open Court concerned, he is bound to obey the same not only as per Sections 73 and 45 of the Indian Evidence Act, but also under Section 311-A of Cr.P.C., but for to consider the request from the submissions by both sides that sending of the specimen signatures with disputed signatures with admitted signatures if any is only after completion of the prosecution evidence and for that matter it is the submission that the trial Court already closed the prosecution evidence within the time frame fixed, that was not acceded. In fact, time frame if at all fixed, it is the duty of the trial Court, if not completed the evidence within the time frame to seek extension from the order of the High Court, which granted time frame and shall not close abruptly the evidence of the prosecution witnesses at the post framing of charges.

The closure order of the evidence of the prosecution witnesses cross examination by the accused passed by the lower Court is set aside by directing to the lower Court to conduct the cross examination of the prosecution witnesses which are required to be cross-examined as per the request of the accused persons by proceeding day-to-day if possible.”

6. It is further contended that the petition is not maintainable on the ground that A2 was not arrested and requested this Court for dismissal of the petition. Upon hearing both counsel, the trial Court concluded that the petition under Section 311-A is not maintainable, but issued direction to the accused to sign in open Court as Gurram Nagaiah to send the signatures to the expert and allowed the petition.

7. The present petition is filed to quash the order passed by the Magistrate on the ground that as per Section 311-A Cr.P.C., the Court is incompetent to obtain signatures of any person and the proviso thereto bars the Court from obtaining signature in the open Court unless the person was arrested in connection with the offence, which is subject matter of the calendar case. But the trial Court held that petition under Section 311-A Cr.P.C. is not

maintainable, but passed the impugned order by exercising power under Sections 73 and 45 of the Evidence Act. These two provisions have no application to the present facts of the case and prayed to set aside the order.

8. During hearing, learned counsel for the petitioner/A2 would contend that the order passed by the Magistrate forcing A2 to sign as Gurram Nagaiah, though A2 is Gurram Venkata Subbaiah is hit by Article 20(3) of the Constitution of India and apart from that Sections 73 and 45 of the Indian Evidence Act do not empower the Court to force any person to sign in the open Court and hence, the impugned order passed by the Magistrate is erroneous and prayed to set aside the same.

9. The first provision quoted in the petition is Section 244(2) Cr.P.C. Section 244(2) Cr.P.C. deals with the power of the Magistrate to issue summons to any of its witness directing him to attend or to produce any document or other things. Here, A2 is the person, who allegedly forged the signature and no summons need be issued to him invoking Section 244(2) Cr.P.C. since it permits the Magistrate to issue summons to any witness, but A2 is not a witness to be examined before the Court or to produce any document and consequently, the petition under Section 244(2) Cr.P.C. is not maintainable.

10. The other provision quoted is Section 311-A Cr.P.C., which deals with power of the Magistrate to order person to give specimen signatures or handwriting. If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding

under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates, shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting, but there is a rider to the Section, the proviso which clearly mandates the arrest of the accused in connection with such investigation to obtain such signature or handwriting in the open Court. Here, admittedly, A2 was not arrested in connection with the investigation or proceeding and learned counsel for the 2nd respondent fairly conceded during argument that the trial Court also rightly concluded that the petition under Section 311-A Cr.P.C. is not maintainable. Therefore, the finding recorded by the Magistrate cannot be disturbed by this Court with regard to the maintainability of the petition under Section 311-A Cr.P.C. Therefore, the finding recorded by the trial Court is upheld.

11. The other Section of law in the petition is Section 45 of the Indian Evidence Act, which deals with relevancy of opinion of an expert. When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Therefore, petition under Section 45 of the Indian Evidence Act is not maintainable under law since it deals with relevancy of expert opinion on certain aspects referred in Section 45 of the Indian Evidence Act. The opinion of an expert is only a corroborative piece of evidence and such opinion has to be received with great caution.

The opinion of a handwriting expert given in evidence is no less fallible than any other expert opinion adduced in evidence with the result that such evidence has to be received with great caution. Therefore, directing A2 to sign as Gurram Nagaiah though he is Gurram Venkata Subbaiah is nothing but incriminating him, which is in violation of fundamental right guaranteed under Article 20(3) of the Constitution of India i.e. protection against self incrimination of any person apart from that a petition under Section 45 of the Indian Evidence Act is absolutely not maintainable as it deals with relevancy of expert opinion.

12. The other section of law quoted in the petition is Section 73 of the Indian Evidence Act, which conferred power on the Court to compare the disputed signatures with admitted signatures of any person to ascertain whether the signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. This section also applies, with necessary modifications, to finger-impressions. This Court is entitled to make comparison of disputed and admitted signature for just conclusion as a rule of prudence and can obtain signatures. However, such power can be exercised sparingly in exceptional circumstances.

13. The Apex Court in **Ajit Savant Majagvai v State of Karnataka**¹ held that as a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of the slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has power to compare the disputed signature with the admitted signature as this power is clearly available under Section 73 of the Act. Similarly in **Anand Reddy v The State of A.P.**², this Court while considering the interpretation of statutes held that in the event of there being an inconsistency between two provisions of law, the one last enacted should prevail, in view of the assumption that it is the last expression of the legislative will or intent that should prevail.

14. In any view of the matter, the request made by the complainant before the trial Court in the petition filed under various provisions referred supra is as follows:

“the petitioner/complainant prays that your honour may be pleased to direct the respondent/2nd accused to give him sample writings as G.Nagaiah in open Court for comparison by the Government Handwriting Experts in conformity with the order of the Hon’ble High Court of Telangana and A.P. in Crl.M.P.No.2619 of 2016 in the interest of justice and equity.”

15. The Magistrate also issued a direction to A2 to give his sample writings in open Court by writing as the name G.Nagaiah appearing in Exs.P.5 to 7 for comparison with the disputed signatures by the handwriting expert. Section 73 of the Indian evidence Act enables

¹ (1997) 7 SCC 110

² AIR 1959 AP 144

the Court to compare the disputed signatures with the admitted signatures to compel the person or the accused to give his sample writings in the open Court. Even the judgments relied upon by learned counsel for the petitioner/A2, permits the Court to obtain specimen signatures to exercise power under Section 73 of the Indian Evidence Act. If the order is for limited purpose of compare the disputed signatures with that of admitted handwriting, being undertaken by the Court, exercising power under Section 73 of the Indian Evidence Act, the order under challenge cannot be faulted. But the direction issued by the trial Court is otherwise i.e. to appear before the Court and give his specimen handwriting as Gurram Nagaiah as appearing in Exs.P.5 to 7 to send the same to expert opinion and not for exercise of power under Section 73 of the Indian Evidence Act. Therefore, in view of the proviso to Section 311-A Cr.P.C., the direction issued by the trial Court is illegal and invalid as the petitioner was not arrested in connection with the investigation or proceedings, which is subject matter of the calendar case. If the order is only to exercise power under Section 73 of the Indian Evidence Act, it cannot be interfered.

16. Accordingly, the criminal petition is allowed setting aside the order in CrI.R.P.No.67 of 2016 passed by the XVI Additional Sessions Judge, Nandigama.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

04.01.2018
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