

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.4925 OF 2018

ORDER:

Petitioner is the accused in Crime No.173 of 2017 on the file of the I Special Metropolitan Magistrate at Hastinapuram, R.R.District. It is the out come of the private complaint of the 2nd respondent society for the offence under Section 138 of Negotiable Instruments Act that was taken cognizance. After commencing of trial from the cheque marked as Ex.P1, accused filed CrI.M.P.No.384 of 2018 on 08.03.2018 under Section 45 of the Indian Evidence Act to send Ex.P1 cheque bearing No.826883 dated 08.08.2017 for Rs.72,09,331/- drawn on Syndicate Bank, Tirupathi to handwriting expert for comparison with regard to age difference in the ink in the handwritings and signature on the cheque in question.

The defence of the accused is that she signed blank cheque that was obtained from her at the time of sanctioning loan as security in the year 2014 and misused as if given in 2017 August, which after lapse of 3 years, by filing contents with different ink which is thereby necessary to compare the difference in the ink and writings with signature ink.

The complainant as respondent opposed the petition with contest that petitioner accused was member of the society of the complainant and availed SOD, business development of Rs.1,25,00,000/- dated 05.03.2014 to repay with interest and also execute documents like pronote, agreement and deposit title deeds and

create equitable mortgage over the property and the SOD Limited later enhanced to Rs.1,50,00,000/- on 30.07.2014 that was renewed on 24.02.2016 and he became irregular in liquidation of the amounts particularly the interest components and accused applied for term loan of Rs.1,60,00,000/- that was sanctioned on 24.02.2014 to repay the interest payable in instalments and for several demands in part payment of above cheque for the above amount towards discharge of liability of payment of interest issued and the same is presented returned dishonoured and did not even choose to reply to statutory notice on the liquidation for legally enforceable debt and criminal petition is liable to be dismissed being after thought.

There from the Court below passed impugned order dated 09.11.2018 in CrI.MP.No.384 of 2018 dismissing the said petition of the accused under Section 45 of the Indian Evidence Act. Its with the observations that Madras High Court in *Rangappa v. Mohan (2010 (11) SCC 441)* held that in India there is no such expert to ascertain the age of the ink and requested to send the cheque to Forensic Department, to ascertain the age of the ink is only to drag on the proceedings on the ground that there are not facilities to ascertain the age of ink and in *Nisha Guptha vs. Ram Kishna Guptha*¹, the Delhi High Court held that cheques in question when signed by the accused, there is no necessity to send the said cheques to handwriting expert for

¹ 2015 (1) civil LJP 139

opinion. The Madras High Court in *S.Gopal vs. D.Bala Chandran*² also taken the same view.

Coming to the facts, when the accused is not disputing the facts, signature on the cheque in contending blank cheques signed for further payment of instalments given as security, later filled by the complainant society officials in foisting the claim. When the signature is admitted, the scope of enquiry is changed and the question whether the cheque issued for legally enforceable debt discharge and there is no evidence on record to consider the issue involved, thereby no necessity to send the cheque to expert for opinion.

The contentions in the present petition impugning the same are that the Court below not properly appreciated the core contention raised and in view of the decision of this Court in CrI.R.C.No.3204 of 2016 dated 19.01.2017 considering the decision of the Madras High Court supra, the order of the lower court is no way sustainable and thereby liable to be set aside in allowing the petition.

The counsel for the respondent complainant supported the order of the Court below by reiterating the counter contested before the Court below.

In fact in similar question involved for answer in CrI.R.C.No.2363 of 2018 dated 22.02.2019, this Court on the aspect as to determination of the age of the ink involved in dispute referring to expression of this Court in *T.Rajalingam @ Sambam v. State of*

² 2008 (3) civil LJ 428 at 431

*Telangana*³ which referred to the valuable defence right of the accused and another expression of the Apex Court in *Rangappa v. Mohan*⁴ reverse onus burden of accused and also referring to expression of the Punjab and Haryana High Court in *Yashpal v. Kartar Singh*⁵, another view in *Kambala Nageswara Rao v. Kesana Balakrishna*⁶, Madras High Court another expression in *A.Inayathulla v. A.Ramesh*⁷, another expression in *Elumalai v. Sibramani*⁸ and by referring to the expression of the Apex Court in *Shashi Kumar Banerjee v. Subodh Kumar Banerjee*⁹, and above referred expression of the Madras High Court in (supra 2), another expression in *A.Sivagnana Pandian v. M.Ravichandran*¹⁰ and another in *A.Devraj v. Rajammal*¹¹, another in *K,Vairavan v. Selvaraj*¹². Particularly from the expression of Inayathullas's case (supra 7) referring to *R.Jagadeesan*, there is technology available to determine the age of the ink in India at Nutron Activation Analysis, BABC, Mumbai which is a Central Government organisation and the expression of the Apex Court in *SPS Rathore v. CBI*¹³ that once an expert opinion can be given and the same is admissible and relevant, it is premature to determine the evidentiary value as held in *Kalyani*

³ 2017 (3) ALT CrI.203

⁴ 2010 (11) SCC 441

⁵ AIR 2003 (P&H) 344

⁶ 2013 Law Suit (AP) 586

⁷ 2015 Law Suit (Mad) 807

⁸ 2011(3) CTC 616

⁹ AIR 1964 SC 529 at 537

¹⁰ 2011(2) MadLJ (Cri) 769

¹¹ 2011 (3) MadLj (Cri) 440

¹² 2012 (5) CTC (Mad) 596

¹³ 2016 (3) ALT (Cri) 307

*Baskar v. M.S.Sampoornam*¹⁴ by the Supreme Court that in a cheque bouncing case, the accused got a valuable right in requesting as part of his defence including in relation to sending of disputed signature or writings to expert that cannot be shunned causally. The Full Bench of this Court in *Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu*¹⁵ referring to Division Bench expression in *Janachaitanya Housing Ltd v. Divya Financiers*¹⁶ observed that contemporary relevancy of signature not available is not a ground to refuse and when to send depends on the facts of each case and as observed in *Nagappa* supra accused can ask to send the documents in question where signature is in dispute to expert for opinion. On the other hand by referring to *Takkella Radhadrishnaiah v. Ganipaineni Nagaraju*, another single Judge expression of this Court where *Rajalingam* not brought to its notice and another single Judge expression of this Court reiterating the same and from *Shasi Kumar Banerjee*, once the technology is available to determine the age of the ink can be sent to expert and premature to determine the evidentiary value, cannot be said a futile exercise of this Court and once the defence of the accused valuable that cannot be shunned as per the expression in *Kalyani Bhaskar and Nagappa* of Apex Court supra and the document can be sent to expert thereby.

In view of the above, leave about the contention of the counsel for the defacto complainant of once the cheque admittedly issued

¹⁴ 2007 (1) SCC (Cri) 577

¹⁵ 2016 (2) ALT 248

¹⁶ 2008 (3) ALT 409

rooted from the account with signature of accused, the presumption in favour of the complainant is reverse onus burden of accused or the protection of Section 20 of the Negotiable Instruments Act for inchoate instrument is applicable even to cheques which are matters of defence to raise before the lower Court for that itself is not a ground to refuse the sending of the cheque in question to determine the age of the ink of the signature with reference to the contents.

Accordingly, in the result and from the above, the dismissal order of the lower Court is set aside and the petition is allowed by allowing the application of the accused/petitioner before the lower Court in Crl.M.P.No.384 of 2018 on the file of the learned Special Magistrate, Hasthinapur in directing the learned Magistrate to send the cheque to determine the age of the ink therein of the signature are same or not at one time or different times to give opinion with reference to it and for that the accused shall deposit before the trial Court Rs.20,000/- within one week from the date of receipt of the order for the learned Magistrate to send the cheque in question to Nutron Activation Analysis, BABC, Mumbai, which is a Central Government Organization. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

Dr. B. SIVA SANKARA RAO, J

Dt.18.03.2019
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