

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL REVISION CASE No.919 of 2019

JUDGMENT:

The present Criminal Revision Case is filed by the complainant under Sections 397 and 401 Cr.P.C. aggrieved by the order, dated 12.07.2019, passed in CrI.M.P.No.347 of 2019 in C.C.No.1177 of 2016 on the file of the Special Judicial Magistrate of First Class (Prohibition and Excise Offences) at Nalgonda, wherein an application filed by the 2nd respondent/accused for sending ExP1-Promissory Note and Ex.P2-Cheque to the Forensic Science Laboratory for determining the age of ink in drafting the disputed documents, was allowed.

2. The averments in the aforesaid petition are that the revision petitioner/complainant filed a private complaint against the 2nd respondent/accused in respect of the offence committed by him under Section 138 of the Negotiable Instruments Act and the same was taken on file by the trial Court as C.C.No.1177 of 2016.

3. In the aforesaid Calendar Case, the revision petitioner/complainant was examined as P.W.1 and the Scribe of the Promissory Note was examined as P.W.2 and got marked

Exs.P1 to P6. On behalf of the 2nd respondent/accused, D.Ws.1 and 2 were examined and Ex.D1 was marked. It is the plea of the 2nd respondent/accused that the writings appearing on Ex.P1-Promissory Note and Ex.P2-Cheque do not belong to him and they are forged and fabricated and that it is required to be determined the age of the ink used in drafting the said documents. In this background, the 2nd respondent/accused filed the aforesaid Crl.M.P.No.347 of 2019 seeking to send Exs.P1 and P2 to the Hand Writing and Finger Print Expert for comparison with his admitted signatures under Ex.D1-Empty Promissory Note in order to determine the age of the ink and size of Ex.D1. The revision petitioner/complainant contested the said petition by filing a counter-affidavit before the trial Court. It is the contention of the revision petitioner/complainant that the 2nd respondent/accused himself admitted in his evidence that he has executed the documents under Exs.P1 and P2. It is further contended that there is no such scientific technology or method available before the F.S.L., Hyderabad, to determine the age of the ink in drafting the disputed documents and as such the petition is not maintainable and is liable to be dismissed.

4. The trial Court on a consideration of the entire material available on record, allowed the said petition in part with a

direction to send Exs.P1 and P2 to the F.S.L., Nutron Activation Analysis, BABC, Mumbai, for determining the age of the ink subject to the 2nd respondent/accused depositing Rs.20,000/- and also the admitted signatures. The prayer for sending Ex.D1 for determining its size was refused.

5. Heard learned Counsel for the revision petitioner/complainant; learned Additional Public Prosecutor for the 1st respondent and learned Counsel appearing for the 2nd respondent/accused.

6. It has been contended on behalf of the revision petitioner/complainant that the prayer in the petition filed under Section 45 of the Evidence Act is not permissible and no purpose would be served by sending the documents in question to the Expert comparison. It is further contended that the learned Magistrate allowed the petition without ascertaining the fact that there is no mechanism for determining the age of the ink used in drafting the documents. In support of the said contentions, he relied upon the decisions of this Court in *Kambala Nageswara Rao v. Kesana Balakrishna*¹ and in *Surabhi Kishan Rao v. Bejhanki Indira*².

¹ 2014 (1) ALT 636

² (2019) 5 ALD 61 (TS)

7. On the other hand, learned Counsel for the 2nd respondent/accused contended that there is no illegality or irregularity in the order passed by the trial Court and hence there is no need to interfere with the impugned order. The learned Counsel placed reliance on the decision of this Court in *Namineni Audi Seshaiiah v. Numburu Mohan Rao*³.

8. In *Mrs.Kalyani Baskar v. Mrs.M.S.Sampoornam*⁴ the Apex Court observed as under:

“Section 243 (2) is clear that a Magistrate holding an inquiry under the Cr.P.C. in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a hand-writing expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the hand-writing expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence.

³ (2018) 6 ALD 751

⁴ (2007) 1 SCC (Cr.) 577

Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial."

9. Further, in *Namineni Audi Sessaiah (supra)*, a learned Judge of this Court, on referring various decisions, allowed the Civil Revision Petition and directed the trial court to refer the disputed document to an agency called 'Nutron Activation Analysis, BABC, Mumbai', which is a Central Government Organization, where the facility to determine the age of the ink is available.

10. Thus, it is clear that there is a Central Government Agency, which has got requisite expertise to determine the age of the ink of writings. In my considered view, referring the documents to the said Agency will help the accused to establish his defence. Since the valuable rights of the parties are at stake, the Court cannot shun from referring the document to the expert when specifically requested by the party. Hence, I see no illegality or irregularity in the order passed by the trial Court.

11. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending shall stand dismissed.

JUSTICE G.SRI DEVI

20.12.2019
Gsn



