

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

Crl.Rc.No.2363 of 2018

ORDER:

The petitioner in the present revision is accused in C.C.No.31 of 2018 on the file of the Special Magistrate, Cyberabad at Hayathnagar, which case was renumbered from C.C.No.717 of 2017.

2. The 2nd respondent is the complainant therein. It is for the offence under Section 138 of N.I. Act outcome of private complaint for dishonour of the cheque for Rs.15,00,000/- No.783255 dated 17.6.2017 from the issuance of statutory notice and from failure to pay and from accrual of cause of action, and after perusal and from the sworn statement taken cognizance and accused put-forth his appearance and it is while under trial, the accused filed the petition in Crl.M.P.No.1489 of 2018 under Section 45 of the Indian Evidence Act, with a prayer to send the pro-note dated 25.11.2014 and the cheque supra to the CFSL, Hyderabad to determine and ascertain the age in respect of the signatures of the petitioner/accused and the two documents. The learned Magistrate by the impugned order dated 24.8.2018, after contest, dismissed the same. Present revision impugnedment is against that.

Heard both sides and perused the material on record.

3. Before coming to the petition and the scope with reference to the law, it is necessary, in brief, to refer the private complaint averments.

4. The complainant and accused, according to the complaint averments are known to each other for the past 15 years and out of that acquaintance and friendship, when the accused asked to advance Rs.15 lakhs to meet his necessities, complainant paid the same to the accused on 25.11.2014 and

accused executed pro-note of even date in his favour to repay with 24% per annum interest and later failed to pay instead of demands and ultimately issued the cheque supra on 17.6.2017 drawn on Vijaya Bank, Hardikar Branch, Hyderabad in discharge of the principal amount covered by the pro-note and by assuring to pay interest later within short period, however, the cheque when presented, returned dishonoured as account blocked as per bank cheque return endorsement covered by memo dated 21.6.2017 and from the statutory notice issued, served on the accused, which he did not even reply and failed to pay and from the cause of action liable for the offence.

5. From the above, coming to the petition averments, mainly from paragraph No.2 dated 23.7.2018 that the petitioner/accused disputes the transaction alleged, that in the cross-examination of P.W.1, it is suggested that the alleged cheque and alleged pro-note were kept as collateral security for purpose of bank loan availed by Society College at relevant time when the complainant was Treasurer of Sri Venkata Sai Educational Society. The cheques were in the custody of the Treasurer i.e. the complainant and the pro-note and cheque signed by the petitioner/accused during the year 2009-10 and the rest of the portion of instruments filed by the complainant were recently filled apparently in 2017 and the age in respect of the signature appearing on the cheque and pro-note with respect to rest of the pro-note and cheque filled contents show the same and as it is the specific case of the petitioner/accused of the cheque and pro-note obtained in 2009-10 are misused, though obtained for a difference purpose and the claim is incorrect and not liable for prosecution, thereby it is necessary to send the cheque and pro-note to determine the age of the ink by expert.

6. The counter filed by the complainant in opposing the petition, is mainly from paragraphs 2 and 3, with contest, that in the cross-examination of P.W.1-complainant/accused, suggestions were given of pro-note note and cheque are kept as collateral security for the bank loan availed by the College and at that time the complainant was Treasurer of the College Society. However, in the entire cross-examination of P.W.1, there is no suggestion that signatures found in the pro-note note and cheque are in different ink and are in different handwriting and it is admitted by the petitioner/accused in the cross-examination of P.W.1 that signatures on the cheque and pro-note belong to him, not a case of forged or fabricated and not even request to send handwriting expert the documents, but only the age of the ink of the signatures and the same doesn't arise, but for no bonafides and only to drag on the proceedings, age of the ink cannot be determined by expert with scientific accuracy, for example, if ink manufactured five years before the date of execution the document, then resolving the controversy would create confusion and there is no such facility available in India to find out age of ink that when the signature admitted, question of sending document to expert to determine the age of ink of the signature doesn't arise to entertain and mere determination of age even if there exists any facility, cannot by itself determine the age of the signature and petitioner/accused shall prove his defence of cheque and pro-note obtained for some other purpose were misused by another mode of evidence to resolve the real controversy involved and thereby the petition liable to be dismissed.

7. The impugned order of the learned Special Magistrate, particularly, from paragraphs 7 and 8 speaks about the accused, as per the case of the complainant, came to the witness box as D.W.1 and never deposed about such defence now taken in the petition was never spoken of any ink

difference in his chief examination then compared to the pro-note and cheque that are issued by him, according to him, for security purpose and when there is no dispute on the signatures, sent to determine age on the writings therein cannot be is the contention which is with merit also from the contention of the manufactured date of ink, the age suppose is five years ahead of the date when used for signing, then difficult to say that actually that ink is used for signing the document by anybody and the contention of the respondent that there is no such facility available to find age of ink is with some substance from the very defence of accused of cheque and pro-note issued by him, by signing in blank, for security purpose for the loan obtained by College and he got liberty to give those facts by adducing any evidence and there is no point in his filing the petition at the stage when matter coming for arguments, but to protract the matter and thereby, there is no merit in the petition, hence dismissed.

8. This Court in *T.Rajalingam @ Sambam v. State of Telangana*¹, referring to the expressions of *T.Nagappa v. Y.R.Muralidhar* [AIR 2008 SC 2010] and the three Judge Bench expression in *Rangappa v. Mohan* [2010 (11) SCC 441] and the reverse onus burden of accused, when arises, so also of the valuable defence right of the accused and the expression of the Punjab and Haryana High Court in *Yashpal v.Kartar Singh* [AIR 2003 (P&H) 344] saying age of the ink cannot be determined by expert. Further, as per the expression of A.P. High Court in *Kambala Nageswara Rao v.Kesana Balakrishna* [2013 Law Suit (AP) 586], mere determination of age of ink, even if there exists any facility, cannot determine the age of signatures and thereby no purpose be served in sending disputed cheques to expert, coming to the Madras High Court expression in *A.Inayathulla v. A.Ramesh* [2015 Law

¹ 2017 (3) ALT CrI. 203

Suit (Mad) 807], age of ink not determinable to consider the application of accused to send disputed cheque for that purpose by referring to several expressions including earlier that of the Court and in *Elumalai v. Subramani* [2011 (3) CTC 616] referring to several to authors on the age of ink and writings that can be determined, but to take initiatives to evolve procedure for experiment with latest technology for achieving improvement on the subject on the basis of choosy and discerning performance of researches with reference to the names of chemicals and reagents to be utilized, to solve the issue by experts to put authoritative theories and established technologies to empirical use and inventiveness with reference to accepted and proven principles and the scientists can elect non-destructive technique and it is high time for the scientists of State and Central Governments to use in practice the technology to determine the age of writings. It is with reference to it and further with reference to the expression of the Apex Court in *Shashi Kumar Banerjee v. Subodh Kumar Banerjee*, [AIR 1964 SC 529 at 537], expert admitted in his evidence that it was only by a chemical test that it could be definitely stated whether a particular writing was of a particular year or period and also admitted about applied no chemical tests in that case and his opinion cannot on his own showing to give any value had he applied chemical test and the author *Osborn* on questioned documents at page 464 says even with respect to chemical tests to determine the age of ink available as a rule are a mere excuse to make a guess and furnish no reliable data upon which a definite opinion can be based and also by referring to other expressions of Madras High Court in *S.Gopal v. D.Balachandran* [2008(1) MadLJ (Cri) 769], *A.Sivagnana Pandian v. M.Ravichandran* [2011(2) MadLJ (Cri) 595 at para 32], *A.Devaraj v. Rajammal* [2011(3) MadLJ (Cri) 440] and *K.Vairavan v. Selvaraj* [2012(5) CTC (Mad) 596], came to the conclusion of the expertise to

determine the age of the ink available including in India, particularly from paragraph 4 of *Inayathullah* supra, referring to *R.Jagadeesan* supra, reiterated of the Institute at Mumbai, where technology is available known as Neutron Activation Analysis, BABC, Mumbai, to find out approximate range of the time, during which writings would have been made, which is a Central Government Organisation and thereby the document in dispute to determine the age of the ink can be sent to the expert and by saying there is another judgment of Karnataka High Court in *Ishwar v. Suresh* [2010 CrLJ 1510] and the other expression of the Apex Court in *SPS Rathore v. CBI* [2016 (3) ALT (Cri) 307 at paras 27 to 30] that once an expert opinion can be given and same is admissible and relevant, it is premature to determine the evidentiary value as to whether it can be basis or not, atleast to serve as piece of corroboration, whereby to what extent ultimately to be determined from the reasons given to the opinion, is a matter for ultimate appreciation and by also referred to the other expression of the Apex Court in *Kalyani Baskar v. M.S. Sampooranam* [2007(1) SCC (Cri) 577], which is also in relation to a cheque bouncing case for the offence under Section 138 of N.I Act, observed of accused got a valuable right in requesting as part of his defence, to send the disputed signatures or writings on the cheque to expert, that cannot be shunned unless the Court thinks that the object of the application itself is vexatious or with a delay tactics, also by referring to the Full Bench expression of this Court in *Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu* [2016 (2) ALT 248], which referred to earlier Division Bench expression in *Janachaitanya Housing Ltd. v. Divya Financiers* [2008(3) ALT 409], saying contemporary relevancy of small gap itself is not criteria unless available, a gap itself is not a ground to refuse the sending of documents for comparison and there is no circular as to what time the

document can be asked to be sent to the expert for opinion and by referring to *T.Nagappa* supra, where it is observed of when accused disputes the liability of any legally enforceable debt with the contention of complainant misused the cheque with signature of accused, to rebut the presumption in favour of the complainant, accused must be granted the opportunity for adducing evidence, as he able to rebut, there is no liability to fasten and adducing of evidence in support of defence is by preponderance of probability which is an essential rule of procedure to ensure justice and to sub-serve the ends of justice in directing to send the document to determine the age of the ink to expert. The above judgment of *Rajalingam* was dated 19.1.2017. In fact, earlier to it, there is another similar judgment of this Court in *Takkella Radhakrishnaiah v. Ganipaineneni Nagaraju* in C.R.P.No.1698 of 2016 dated 23.12.2016, that was no doubt, not brought to the notice of this Court while rendering the judgment in *Rajalingam* supra. In *Takkella Radhakrishnaiah*, which is by referring to the Madras High Court expression supra and *Rajalingam*, observed of once the judgment speaks of no technology developed in India, there is no practical purpose that could be served for the impracticability involved with no need to make a futile exercise. Same is quoted by the self-same other learned single Judge in another expression in C.R.P.No.1079 of 2017 dated 3.3.2017 and by then *Rajalingam* supra dated 19.1.2017 already delivered that was not brought to the notice, not required. From these, there are two views, one is as per *Rajalingam*, the technology is available at Mumbai, the Central Government Organisation, to determine the age of ink and from *Rajalingam*, referring to several expressions of the Apex Court including in *Shashi Kumar Banerjee*, age of ink determination technology available, should have been considered and from the expression of the Apex Court in *SPS Rathore*, Court cannot pre-determine once relevant

and admissible the evidentiary value which is a matter for ultimate appreciation from evidence adduced, in sending or not the document to the expert for opinion as part of valuable defence right of the accused and same is the line of expressions of the Apex Court in *Nagappa* and *Kalyani Bhaskar* of 2007 and 2008 respectively and of the other single Judge in *Takkella Radhakrishnaiah*, where not referred about the technology available in Nutron Activation Analysis, BABC, Mumbai to determine the age of the ink, which is a Central Government Organization, that was also referred and reiterated in para 4 of *Inayatullah* besides *R.Jagadeesan*. It is thereby again the matter came up for consideration before this Court in *Namineni Audi Seshaiiah v. Numburu Mohan Rao*, in the civil matter, C.R.P.No.4656 of 2018 dated 25.9.2018, reported as 2018(6) ALT 285, observed by referring to the other two single Judge expressions and the earlier expression of this Court in *Rajalingam*, which elaborately discussed the law, concluded that once there is expertise to determine the age of the writing of ink and same is admissible and relevant, the document can be sent and it is premature to determine its evidentiary value but for in trial, with reference to other facts. By the time, the judgment delivered on 25.9.2018 in *Namineni Audiseshaiiah* supra, the another single Judge expression of this Court in *Polana Jawaharlal Nehru v. Maddirala Prabhakara Reddy* in C.R.P.No.6069 of 2016 and batch dated 7.4.2017, not brought to the notice of this Court nor to the single Judge expression therein brought notice of the expression in *Rajalingam @ Sambam* supra. No doubt, in *Polana Jawaharlal Nehru* supra, the Apex Court expression in *Shashi Kumar Banerjee*, the learned single Judge also referred his earlier expression while at Madras High Court referred to 2011(6) MLJ 524, referred supra, besides 1993(3) ALT 446 of *Uppu Jhansi Lakshmi Bai v. J.V.Rao*, referring to the author Osborn, that is no doubt quoted by

mentioning *Rajalingam* supra and observed in *Ponnala Jawaharlal Nehru* ultimately from paras 14 and 15 as follows:

“14. It is an admitted fact that the science relating to forensic examination of Handwriting, especially in relation to the fixation of the age of the ink, is not perfect. In cases of this nature any reference of a document to the Handwriting Expert just for the purpose of finding out whether the ink was 5 years old at the time of institution of the suit or 3 years old at the time of institution of the suit, is not likely to bring any fruitful result. Interestingly in one of the books relied upon by the learned Judge of the Madras High Court, namely “Handwriting Forensics” by B.R. Sharma, Chapter 25 contains a Glossary under the title “Documenpaedia”. In the said chapter, there is an interesting portion relating to “INK AGE”.

This portion reads as follows:

“INK AGE: Age of the writing can sometime be given in relative terms. Upkeep of the document plays an important role. Ink has been extensively studied to fix the age of the documents. There are two aspects which have been explored.

The compositions of inks in common usage have been changing continuously. It was the carbon ink (known as Indian Ink) to start with. It changed to iron tannin inks, then to water-soluble dye inks and later to organic solvent inks as for ball pens. New dye inks are coming up continuously. Thin Layer Chromatography (TLC) can easily identify the ink dye even from an ink line without visibly damaging the writing line. High Performance TLC gives better results. The date of induction of a particular ink, therefore can be ascertained with the help of its manufacturer. If a document is purported to be written prior to its induction of the ink, it is obviously false.

In some countries data relating to induction of various inks is kept for ready reference.

Some inks fade with time. The extent of fading may give some idea about the age of the writing.

Inks diffuse in the paper. The extent of diffusion may give some guess about the age of writing.

Iron inks become darker in colour with age. The shade of the ink may give some idea of the age of writing.

In some countries age marker chemicals, usually radioactive materials, are added to the ink. They indicate the age of the writing.

Fresh ink is easily smudged. Older inks do not smudge easily. The ease of smudging may give a rough estimate of the age of the writing.

The methods listed above look impressive. But in practice it is seldom that correct age of the document can be determined as there are many variables which affect the changes in the ink.

Age markers can give correct age of the writings. However, they are not used in India.”

15. Therefore, it is clear that no useful purpose will be served by referring the document to the Handwriting Expert. Hence, the dismissal of the applications by the Court below cannot be found fault with. Therefore, the Civil Revision Petitions are dismissed.”

9. No doubt, from the concussion in *Polana Jawaharlal Nehru* supra, the evidentiary value is bleak and in practice, it is seldom that correct age of document is determined, there are many variations which affect the changes and thereby no useful purpose will be served by referring the document to handwriting expert. The learned single Judge having observed there is technology to some extent, and even observed same is admissible and relevant, however, concluded that no practical purpose would serve when the evidentiary value is very low and bleak. In fact, in view of the above, the matter requires for reference to a Division Bench, but for with no need to refer in view of the expression of Apex Court in *SPS Rathore v. CBI* that once the expert opinion is admissible and relevant, it is premature to determine the evidentiary value in refusal to send as it all depends upon the reasons

assigned in the opinion for ultimate appreciation atleast as a piece of corroboration.

10. Having regard to the above, and in view of the propositions, it is premature to determine the evidentiary value once the expert opinion is relevant and admissible in relation to determination of age of ink and from availability of the technology, referred supra. There are no grounds for refusal of any request to send the documents to determine the age of the ink.

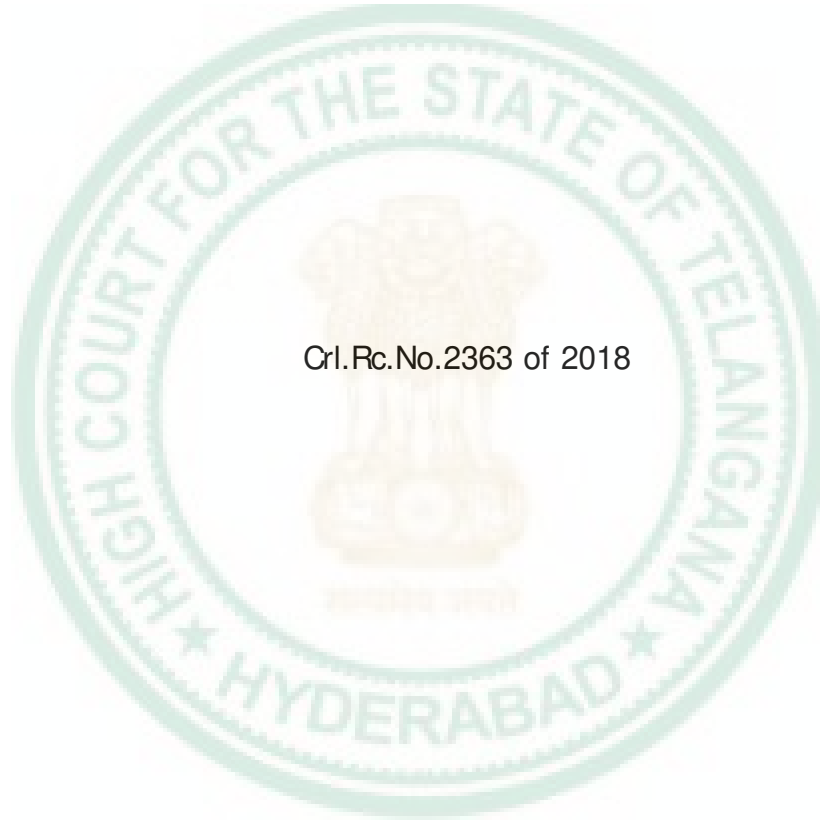
11. From the above legal position, summed up supra, with reference to catena of expressions discussed supra, coming to the facts, the very defence of the accused while admitting his signatures on the pro-note and cheque by saying routed from his account in saying as a security in relation to a loan relating to the College of the Society to which the complainant was by then Treasurer and those blank documents of him even available with him are misused and those are not supported by consideration and there is no any legally enforceable debt and it requires determination of the age of the ink of the signatures on the pro-note and debt stated given at one time by him. In view of the above legal position and from the technology available, it is easy to determine the age of the signature on pro-note one time of the signature respectively admittedly of the accused to probablise any iota of said defence of the accused, which is a valuable right of defence of the accused from reverse onus clause once the cheque routed from his account with his signature admitted as per Rangappa and Mohan and from Nagappa and Kalyani Bhaskar supra, such valuable right of defence of the accused from the request to send the documents to expert cannot be shunned by the Courts, to his prejudice.

12. Accordingly and in the result and from the above, the dismissal order of the lower Court is set aside and the revision is allowed, by allowing the application of the petitioner in CrI.M.P.No.1489 of 2018 on the file of the learned Special Magistrate, Cyberabad at Hayathnagar and directing the learned Special Magistrate to send the cheque and pro-note to determine the age of those whether that of same ink at one time or not of the signatures on the cheque and pro-note respectively and to give opinion also with reference to the written contents of the pro-note and cheque respectively also at one time or at different times as it is the case of the complainant that for the pro-note executed subsequently the cheque allegedly for demands to liquidate the pro-note debt, which is in dispute by accused, as part of his defence, 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 documents 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.

Date: 22.02.2019
DA

Dr.SSRB,J

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO



CrI.Rc.No.2363 of 2018

22.2.2019

DA