

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.485 of 2022

Prasanta Kumar Patra

....

Petitioner

-versus-

Ashok Kumar Sahoo

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER
03.08.2022

Order
No.

05.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 23rd October, 2021 passed by the learned S.D.J.M., Balesore in 1.C.C. No.318 of 2009 whereby the application filed by him for obtaining opinion of the handwriting expert with regard to the alleged manipulation/forgery committed by the Opposite Party on the cheque, has been rejected.
3. Heard the learned counsel for the Petitioner and the learned counsel for the Opposite Party-Complainant.
4. As it appears, the Petitioner is facing trial in a case punishable under Section 138 of N.I. Act for drawing offending

cheque of amount of Rs.4,50,000/-. Though the case is triable by summary procedure, unfortunately it is lingering since 2009. None of the successive Magistrates appears to have bestowed their care to dispose of the same expeditiously. However, the parties at different points of time have contributed to the delay in disposal of the case. The parties may adopt such tactics, but the Court should remain alert and take such steps as to defeat the delay tactics, if any, adopted by them. The Petitioner made a prayer in his defence for sending the cheque to handwriting expert at his own cost on the ground that the amount mentioned in the cheque was not in his own hand and that the same has been mentioned by interpolation. The case was already at the stage of argument. The trial court looking at the cheque and also the handwriting of the Petitioner and the signature of the Petitioner, rejected the contention with regard to interpolation which was not visible to the open eye. Challenging the same, the Petitioner has come to this Court.

5. Learned counsel for the Petitioner submits that defend oneself is a fundamental right guaranteed under the Constitution of India. For the purpose, when the Petitioner wants to adduce defence evidence to rebut the presumption that the complainant

was the holder of the cheque in due course and the cheque was drawn by the Petitioner for discharge of any debt or liability either partly or wholly seeing that he had not drawn the cheque as the body of the cheque was not filled by him, the trial court could not have refused to allow such prayer of the Petitioner. In this regard he has placed reliance on the decisions of the Apex Court in the cases of *G. Someshwar Rao v. Samineni Nageshwar Rao & Anr.*, reported in (2009) 14 SCC 677; *Mrs. Kalyani Baskar v. Mrs. M.S. Sampooranam*, reported in (2007) 2 SCC 258; and *M/s. Survika Distributors Pvt. Ltd. & Another vrs. M/s. S.R. Retail Zone Pvt. Ltd.* (CRLMC No.219 of 2012, decided by this Court on 05.02.2018).

6. In the case of *G. Someshwar Rao* (supra), the Apex Court have held as follows:-

“10. Indisputably, an accused is entitled to a fair trial which is a part of his fundamental right as guaranteed under Article 21 of the Constitution of India. The concept, however, cannot be put to a straight jacket formula. A court of law will have to consider each application filed by an accused praying for comparison of his signature on a disputed document with his admitted signature on its own merits. No hard and fast rule can be laid down therefor.

11. Section 243 of the Code of Criminal Procedure, 1973 provides for grant of an opportunity to the defendant to lead evidence in his defence as also to file a written statement, sub-section (2) whereof reads as under :

"243. Evidence for defence.- (1) (2) If the accused, after he had entered upon his defence, applies to the Magistrate to issue any process for compelling

the attendance of any witness for the purpose of examination or cross- examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross- examined or had the opportunity of cross- examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3)"

The right of an accused under sub-section (2) of Section 243 of the Evidence Act is, thus, not an absolute one. He cannot take recourse thereto for the purpose of delaying the proceedings. An application filed by an accused must be for subserving the cause of justice and not for subverting the same.

In the case of Kalyani Baskar (supra), this Court held as under :

"12. Section 243(2) is clear that a Magistrate holding an inquiry under CrPC 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 handwriting 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 handwriting 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. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules or procedure designed to ensure

justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them."

The said decision has been followed by this Court in the case of T.

Nagappa (*supra*) opining :

"8. An accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognized by Parliament in terms of sub-section (2) of Section 243 of the Code of Criminal Procedure,"

7. As it appears, the decision rendered in the case of ***Mrs. Kalyani Baskar*** (*supra*) has been taken note of in the case of ***G. Someshwar Rao*** (*supra*). I do not think it necessary to overload this order by quoting the ratio laid down in ***Mrs. Kalyani Bhaskar*** (*supra*). In the case of ***M/s. Survika Distributors Pvt. Ltd. vrs. M/s. S.R. Retail Zone Pvt. Ltd. (CRLMC No.219 of 2012, decided by this Court on 05.02.2018)***, refusal for sending the disputed writing to handwriting expert was challenged. Since the accused did not dispute his signature on the cheque, this Court directed other disputed entries, i.e., Ext. 3, 4 and 5 to be sent to Handwriting Expert to ascertain the truth.

8. Learned counsel for the Opposite Party, however, submits that no doubt, accused is entitled to a fair trial and giving chance to him to adduce defence is one of the requirements of fair trial,

but here in this case, as the accused has no foundation that the cheque was ever manipulated or the amount for which he had issued cheque was subjected to any interpolation and in the open eye and the alleged interpolation being not visible, the court has rightly rejected the prayer of the Petitioner. There is no quarrel over the proposition as law laid down by the Apex Court in the case of *K. Bhaskaran* that a duty is also cast upon a court to scuttle the frivolous and vexatious evidence that is desired to be adduced which is nothing but to delay the proceeding. If that is not done, no criminal trial can come to an end inasmuch as the accused may ask to examine someone whose attendance may be very difficult to be procured which would cause further delay in proceeding.

9. Reverting to the case at hand, this Court has also in the case of *M/s. Survika Distributors Pvt. Ltd.* (supra) held that when there is interpolation, to ascertain the truth, the same has to be sent to the expert for its opinion, as it is contented by the defence that the cheque was never drawn by him and the amount therein was disputed. However, it is neither a requirement of law nor a rule of prudence that a cheque in order to negotiable instrument, its body must be filled up by the drawer of the cheque

maintaining the account himself. However, when a drawer of the cheque puts signature even if body is filled up by someone else, i.e., with regard to date and amount the person to be paid, the same makes it a negotiable instrument under the Negotiable Instruments Act and such cheque is entitled to be honored as negotiable instrument under the Negotiable Instruments Act. Allowing the proposition unless the body of the cheque filled up by the drawer of the cheque against the account maintained by him, the same is not a cheque/negotiable instrument, would defeat the right of the persons, who are ignorant of writing anything except their signature, to maintain an account in a bank having facility to draw the amount through a cheque. So allowing such contention to the contrary to the Negotiable Instruments Act. Giving a blank cheque is nothing but giving an implied authority for filling up the amount as well as the name of the drawer. The same is permissible under the Negotiable Instruments Act. Hence, a person cannot be hard of saying in his defence that since he has not filled up the body of the cheque except putting his signature, the same was not for discharge of any legally debt and liability appears to be misconceived. Such defence is impermissible. Therefore, an accused cannot take such defence

seek to send the said cheque for examination by the Handwriting Expert to prove his defence.

10. Furthermore, in this case, signature of the petitioner on the cheque is not disputed. Petitioner contends to have not issued the cheque for the stated quantum of Rs.4,50,000/-, but the Petitioner had never taken a stand that the cheque was not drawn by him in favour of the Complainant at any point of time or that he had issued a cheque for any certain amount, which was changed by interpolation. Interpolation is also not visible from the copy of the cheque and coupled with the same, no foundation was ever led by the Petitioner from the very inception by taking such a stand while cross-examining the complainant or his witnesses. Even in his statement recorded under Section 313 of Cr.P.C. also he has not stated the same, and he simply replied that he has been falsely implicated. The petitioner has made the prayer at a belated stage in this case after the proceeding was protracted for years together, unfortunately for more than 13 years although at no stage of the proceeding at the earliest opportunity he made his any such stand clear. Rather, his defence appears to be a vexatious proceeding.

11. In the case of ***Bir Singh vs. Mukesh Kumar***, reported in (2019) 4 SCC 197, the Apex Court have held as follows:-

“33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.”

The aforesaid view in the case of ***Bir Singh (supra)*** has also been reiterated by the Apex Court in the recent pas in the case of ***M/s Kalamani Tex vs P. Balasubramanian***, reported in (2021) 5 SCC 283.

12. In view of the aforesaid settled position of law and in the facts and circumstances of the case, this Court is of the view that the trial court has rightly throttled such attempt of the Petitioner by refusing to send the cheque for examination by an expert at this stage. The decisions relied on by the learned

counsel for the Petitioner are of no assistance to the petitioner, inasmuch as the same were rendered in different context.

13. In the result, the Criminal Misc. Case being devoid of merit stands dismissed.

14. Interim order dated 23rd March, 2022 passed in I.A. No.378 of 2022 stands vacated. The trial court shall decide the matter and pronounce the judgment as early as possible, but not later than a month from the date of receipt of copy of this order.

(S.Pujahari)
Judge

DA/MRS

