

(2015) 09 MAD CK 0059

In the Madras High Court

Case No : Criminal Revision Case No. 1031 of 2015 and M.P. No. 1 of 2015

Jai Aanuman Jewellery

APPELLANT

Vs

P. Murugan

RESPONDENT

Date of Decision : 25-09-2015

Acts Referred:

Evidence Act, 1872 — Section 45

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) 09 MAD CK 0059

Hon'ble Judges : B. Rajendran, J.

Bench : Single Bench

Advocate : C.K.M. Appaji, for the Appellant

Judgement

B. Rajendran, J.—This Criminal Revision Case is preferred as against the dismissal order dated 03.7.2015 passed by the learned Judicial Magistrate No. 1, Salem in C.M.P. No. 82 of 2015 in S.T.C. No. 169 of 2012 in dismissing the petition filed by the petitioner to send the documents for expert opinion.

2. The petitioner is the accused in S.T.C. No. 169 of 2012 on the file of the learned Judicial Magistrate No. 1, Salem filed by the respondent herein under Section 138 of the Negotiable Instruments Act. According to the respondent, the petitioner/accused, in order to discharge his legally enforceable debt issued two cheques for a sum of Rs. 6,72,000/- and 6,83,000/- vide cheque Nos. 417986 and 417987. On presentation, the said cheques were dishonoured for the reason "payment stopped by the drawer". Hence, after issuing a statutory notice, the complaint under Section 138 of the Negotiable Instruments Act was filed by the respondent.

3. Pending S.T.C. No. 169 of 2012, the petitioner/accused filed a Petition under Section 45 of the Indian Evidence Act in C.M.P. No. 82 of 2015 contending that there was a difference in the handwriting, date, name of the drawer, cheque amount in words and in number, different in ink used in the said writing. Therefore, to find out the same, the age of the ink and other details in the

cheque in dispute has to be ascertained through an expert. Hence, the petitioner prayed the court below to send the cheque in question to finger print experts specifically to ascertain the age of the signature or ink found mentioned in the cheque in question. The Court below dismissed the petition on the ground that the signature in the cheques was not disputed.

4. I have heard both sides and perused the records.

5. It is seen that the complaint was filed in the year 2012. The present petition seeking to send the disputed cheques for comparison has been filed only during the fag end of 2015. As rightly stated by the Court below, in this case, the signature has not been disputed by the petitioner. Therefore, question of ascertaining the age of the ink by sending the cheques in question to expert does not arise.

6. In this regard, the following decisions of this Court could fruitfully be cited:

(i) In the decision of this Court reported in (R. Jagadeesan Vs. N. Ayyasamy and Another, , this Court had held that there is no such facility available in India, especially in Tamil Nadu to compare the age of the ink. In Para Nos. 7, 8 and 9, it was held as follows:-

"7. In order to ascertain the correctness of the said statement, this Court had requested the learned Additional Public Prosecutor Mr. N.R. Elango to request either the Director or the Assistant Director, Document Division, Forensic Science Department, Chennai, to be present before this Court to explain the position. Accordingly, today, Mr. A.R. Mohan, Assistant Director, Document Division, Forensic Science Department, Government of Tamil Nadu, Chennai is kind enough to be present before this Court. According to him, he is the Head of the Document Division of the department. On a query made by this Court regarding the above position, he would explain to this Court that there is no scientific method available anywhere in this State, more particularly, in the Forensic Science Department, to scientifically assess the age of any writing and to offer opinion. However, he would submit that there is one institution known as Nutron Activation Analysis, BABC, Mumbai where there is facility to find out the approximate range of the time, during which the writings would have been made. It is a Central Government Organisation. According to him, even such opinion cannot be exact. He would further submit that since it is a Central Government Organisation and confined only to automic research, the documents relating to prosecutions and other litigations cannot be sent to that institution also for the purpose of opinion. He would further submit that if a document is sent for comparison, with the available scientific knowledge, opinion to the extent as to whether the same could have been made an individual, by comparing his admitted handwritings or signatures, alone could be made. He would further submit that if there are writings with two different inks, in the same document, that can alone be found out. But he would be sure enough to say that the age of the writings cannot be found out at all to offer any opinion.

8. In view of the above clear and unambiguous statement made by no less a person than the Head of the Department of Forensic Science, I am of the view that the whole exercise adopted in various Courts in this State to send the disputed documents for opinion to the Forensic Department in respect of the age of the writings and the documents is only futile. If any document is so sent, certainly the department will say that no opinion could be offered. As a matter of fact, the Assistant Director would inform the Court that already many such documents, which were sent to them by various Courts in the State for such opinion, have been returned by them with the report that no such opinion could be offered.

9. In view of all the above, in my considered opinion, sending the documents for opinion in respect of the age of the writing on documents should not be resorted to hereafter by the Courts unless, in future, due to scientific advancements, new methods are invented to find out the age of the writings."

(ii) It is worthwhile to refer to an unreported decision of this Court in CrI.R.C. (MD) No. 265 of 2012, dated 18.07.2012, which followed the judgment of this Court reported in R. Jagadeesan Vs. N. Ayyasamy and Another, , it was held that the facility to ascertain the age of the ink of the signatures found in the cheques, is not available in Tamil Nadu and that earlier, the matters have been referred to Andhra Pradesh, in fact, now, a report has been sent by the Assistant Director, Central Forensic Laboratory, Andhra Pradesh to the effect that as of now, such facility is not available in India, therefore, there is no possibility to ascertain the age of the ink of the signatures found in the cheques. The relevant paragraphs in the unreported decision cited supra are extracted as hereunder:-

"12. After the said judgement, it appeared that the issue was almost settled. Once again, the very same question was raised before the same learned single Judge [Justice S. Nagamuthu] in V. Makesan Vs. T. Dhanalakshmi, . The learned counsel, who appeared for the petitioner therein, had relied on the judgement of the Hon"ble Supreme Court in Union of India (UOI) Vs. Jyoti Prakash Mitter, wherein in paragraph 10 of the judgement, the Hon"ble Supreme Court has held as follows:-

"....The learned senior counsel for the petitioner therein had also cited Yash Pal Vs. Kartar Singh, wherein also similar view had been taken. Having considered all the above judgements, while rejecting the plea for sending the document for expert opinion, the learned Judge in paragraph 7 has held as follows:-

"7. A perusal of all the above judgements would go to clearly indicate that as of now, there is no expert in terms of Section 45 of the Indian Evidence Act available who could be in a position to offer any opinion regarding the age of the ink by adopting any scientific method. In view of all the above, I am inclined to interfere with the order of the learned Sessions Judge, Fast Track Court No. III, Coimbatore."

13. The very same question again cropped up for consideration before yet

another learned single Judge [V. Periya Karuppiyah, J.,] in Indira Balasubramaniam and others v. S. Subash (C.R.P.NPD No. 3082 of 2008 dated 17.08.2009) wherein the learned Judge in para 16 has held as follows:-

"16. In view of the judgement of this Court discussed earlier there would not be any purpose in sending the impugned cheques for examination to ascertain its age of the ink used for filling up its particulars and signatures put up therein. Therefore, the request of the petitioners to send the cheques through an Advocate Commissioner for Expert's opinion as to the age of the ink cannot be ordered since it does not result in any scientific accuracy. The lower Court had not discussed these points but correctly rejected the claim of the petitioners. Therefore, this Court is not inclined to interfere with the findings of the lower Court and accordingly, the Revision fails and the same is dismissed."

.....

18. After the said judgement, this Court is informed that a number of petitions were filed again in various court across the State for sending the disputed documents to Central Forensic Sciences Laboratory, Directorate of Forensic Sciences. According to the learned Judge though it may be true that there is no expert in the State, the learned Judge was informed that there was an expert in the Central Forensic Sciences Laboratory. It is because of this though the learned Judge had concurred with the view taken in R. Jagadeesan's case cited supra, had directed the document to be sent for examination in the said Laboratory.

...

20. Very recently, the President of Central Forensic Science Laboratory, Hyderabad, Andhra Pradesh State was invited to give a lecture in the Tamil Nadu State Judicial Academy at Chennai on the subject "disputed document". During the course of interaction, a question was posed to him - Is there any expert available for offering opinion regarding the age of the ink used for writing the disputed document? - In categorical terms, he informed that there is no such expert available not only in his Laboratory but in any Laboratory throughout the country at present and, therefore, it is not at all possible to offer any opinion regarding the age of the ink used in the disputed document. When a specific query was made during interaction to the President as to what had happened to the documents already sent to his Laboratory seeking such opinion, he said that the said documents were only returned without offering any opinion.

21. Now, in order to ascertain as to whether there is any expert really available in the said laboratory since the request is to send the disputed document to the said laboratory in Hyderabad, this Court through the Registrar called for remarks from the said laboratory in Hyderabad. The Assistant Director and Scientist "C", Central Forensic Science Laboratory, Hyderabad, has given his remarks through fax message to this Court vide Ref. CFSL(H)DOC/MISC/2012-13 wherein he has stated as follows:-

"This is to submit that as there is no validated method, this laboratory does not undertake the examination for determining the relative/absolute age of the ink of the writings/signatures."

From the above fax message from the Central Forensic Science Laboratory, Hyderabad, it is crystal clear that there is no expert available in the said Laboratory also to offer any opinion regarding the age of the ink.

...

25. In this regard, we may come back to the judgement of Justice S. Nagamuthu in R. Jagadeesan's case cited supra, wherein it is not the view taken by the learned Judge that there is no scientific method available for ascertaining the age of the ink used for writing the disputed document. The learned Judge has only held that there is no expert available, who can scientifically examine the same. Even now, the learned Judge had ascertained from the Forensic Science Department, Government of Tamil Nadu, Chennai, that there is no expert, who can offer such opinion. Now, the Assistant Director, Central Forensic Laboratory, Hyderabad has also stated that there is no such expert available anywhere in India. Thus, it is crystal clear that, as of now, there is no expert available in India. In A. Sivagnana Pandian's case cited supra, Justice S. Palanivelu has stated that in Forensic Science it is possible to ascertain the age of the ink. Regarding such conclusion arrived at by the learned Judge, I have no different opinion. Science has developed so much and that it is possible. As per the leading books referred to by the learned Judge, there is a scientific method available. But, knowing a method alone would not serve the purpose to implement the method. Equipment's are necessary and person with the expertise knowledge is also necessary. If only there is a person who has special skill in the field who is armed with sufficient equipment's, then only he can use the known scientific method to offer his opinion. But, in respect of age of the ink though there are scientific method available in India, there is neither such scientific expert available nor equipment available. It is because of these reasons, I have to necessarily hold that for getting an opinion regarding the age of the ink, the disputed document cannot be sent anywhere as of now. I would make it clear that in future, if any expert emerges and equipment's are also made available, then, after identifying him, the court may forward the disputed documents to him for opinion. Until such time, the document cannot be sent anywhere for the purpose of getting opinion regarding the age of the ink used for writing the disputed document."

(iii) Following the aforesaid judgments, this Court in the judgment reported in Babu Vs. Vinayagam, , held as follows:

"11. As far as comparison of age of the ink sought for by the petitioner/accused by the forensic experts, such a prayer cannot be countenanced in view of the decision rendered by this Court in R. Jagadeesan Vs. N. Ayyasamy and Another, which was also followed by this Court in various other decisions including an

unreported decision of this Court in CrI.R.C. (MD) No. 265 of 2012, dated 18.07.2012 wherein it was held that the facility to ascertain the age of the ink of the signatures found in the cheques, is not available in Tamil Nadu and that earlier, the matters have been referred to Andhra Pradesh, in fact, now, a report has been sent by the Assistant Director, Central Forensic Laboratory, Andhra Pradesh to the effect that as of now, such facility is not available in India, therefore, there is no possibility to ascertain the age of the ink of the signatures found in the cheques.

12. The court below pointed out that when the petitioner admitted his signature in the cheques as well as the promissory note, there is no necessity to send the cheques in question to forensic experts for comparison. Even in the reply given by the petitioner to the statutory notice sent by the respondent or during the course of trial, the petitioner/accused never disputed the execution or entrustment or issuance of the cheques and promissory notes in favour of the respondent/complainant and therefore, the Court below is right in dismissing the petition filed by the petitioner under Section 45 of the Indian Evidence Act. I am fully in agreement with the conclusion arrived at by the Court below and I do not find any reason to interfere with the same."

7. In the light of the decision of this Court, mentioned supra, the relief sought for by the petitioner cannot be granted. The Criminal Revision Case, is therefore, dismissed. However, it is open to the petitioner to let in evidence as are available to him to disprove the complaint filed by the respondent/complainant herein before the Court below. Consequently, the connected miscellaneous petition is closed.