

(2022) 08 RAJ CK 0019

In the Rajasthan High Court

Case No : S.B. Criminal Miscellaneous (Petition) No. 4131 Of 2019

Piyush Dosi

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 08-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 243, 243(2), 245, 482
Negotiable Instruments Act, 1881 — Section 138

Citation : (2022) 08 RAJ CK 0019

Hon'ble Judges : Dr.Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Mahaveer Bishnoi, Vikram Sharma, Sheetal Kumbhat

Final Decision : Dismissed

Judgement

Dr. Pushpendra Singh Bhati, J

1. This Criminal Misc. Petition under Section 482 Cr.P.C. has been preferred praying for the following reliefs:-

"It is, therefore, most humbly and respectfully prayed that this misc. petition may kindly be allowed and impugned order dated 05.02.2019 passed by learned Special Judge, SC/ST (Prevention of Atrocity) Cases, Barmer in Criminal Revision No. 176/2018(11/2018) as well as order dated 20.01.2018 passed by learned Judicial Magistrate, Barmer in Criminal Case No. 406/2017 may kindly be quashed and set aside."

2. This Criminal Misc. Petition has been preferred against the order, dated 05.02.2019, passed by Special Judge, SC/ST (Prevention of Atrocities Cases) Barmer whereby the order dated 20.01.2018 passed by the learned Judicial Magistrate, Barmer in Criminal Case No. 406/2017 was upheld, and dismissed the revision petition of the petitioner, allowing the application filed by the respondent no. 2 summoning the handwriting expert in evidence.

3. Brief facts of the case as placed before this Court by the learned counsel for the petitioner are that the petitioner-complainant filed a complaint against the accused respondent no.2 before the learned Judicial Magistrate, Barmer with the averments that accused respondent no. 2, against certain outstanding dues, issued a cheque of Rs. 5,00,000/- which upon being presented before the concerned bank, was dishonored due to insufficient funds. And that the petitioner sent a legal notice to accused respondent no.2 through his legal counsel but despite service of such legal notice, requisite payment was not made by the accused respondent no. 2.

4. Learned counsel for the petitioner submitted that the accused respondent no. 2 submitted an application before the learned Court below stating therein that the accused respondent no. 2 sent the cheque for the purpose of F.S.L. to a handwriting expert, without the permission of the concerned Court. And that, on this count alone, the application so preferred, deserves to be dismissed.

5. Learned counsel for the petitioner further submitted that the learned Court below allowed the application filed by the accused respondent no. 2 and ordered to summon one Ramesh Thakur, the handwriting and fingerprint expert in evidence. And that the petitioner preferred a revision petition against the said order, but the same came to be dismissed.

6. Learned counsel for the petitioner placed reliance on the judgment rendered by the Hon'ble High Court of Judicature at Andhra Pradesh, in the case of Bayya Mohana Rao and Anr. Vs. Parsia Bala Subrahmanyeswara Rao 2007 SCC OnLine AP 258 wherein the Hon'ble Court ruled, in a similar set of facts and circumstances, the respondent in the said case chose to send the disputed documents and certified copies of the Vakalat, pleadings, etc. to an expert of his volition, which was held it to be an infirmity.

7. On the other hand, learned counsel for the private respondent submits that the impugned order passed by the learned Court below, is sustainable in the eye of law, being also in accordance with settled legal principles, coupled with consideration of the overall facts and circumstances of the case.

8. Learned counsel for the private respondent placed reliance on the judgment of the Hon'ble Apex Court in the case of Kalyani Baskar Vs. M.S. Sampooram 2007 Cr.L.R. (SC) 453 wherein the following observations were made:-

"It is not in dispute that the appellant at the initial stage of her appearance before the Magistrate had filed an application under Section 245 Cr.P.C. in which she had categorically denied her signature on the cheque and its delivery to the respondent besides raising other preliminary objections in opposition to the complaint filed by the respondent under Section 138 of the Act. From the record, it appears that the said application was dismissed by the Magistrate on the ground that the genuineness of the signature can be questioned only at the time of trial. The appellant accepted the correctness of the said order of the Magistrate. During the trial, the respondent was examined as P.W.1 on

22.09.1999 and PW-3, the officer of the Bank, was examined on 22.11.2000. It is thereafter that the appellant had filed the application under Section 243 Cr.P.C. praying to send the cheque, in question, for ascertaining the bona fide and genuineness of her signature appended thereon. The Trial Magistrate as well as the High Court have observed that Section 243 Cr.P.C. deals with summoning of defence witnesses and cause any document or thing to be produced through him. But in the present case, the accused has filed a petition without naming any person as witness or anything to be summoned which is to be sent for hand-writing expert for examination.

To appreciate the reasoning recorded by the High Court in its impugned order, it is useful to refer to the provisions of Section 243 of Cr.P.C, which reads as under:

243. Evidence for defence.--

(1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(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 Magistrate may, before summoning any witness on an application under Sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.

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. 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 of procedure designed to ensure justice should be scrupulously followed, and courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 Cr.P.C. without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243(2) Cr.P.C. refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque, in question, for the opinion of the handwriting expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable."

9. Learned counsel for the private respondent also placed reliance on a judgment rendered by a Coordinate Bench of this Hon'ble Court in the case of Ameer Mohammed Vs. Barkat Ali 2003 4 RLW (Raj.) 2354. Relevant portion of the said judgment is reproduced as under:-

"Contrary to above, there is a direct decision of the Hon'ble Apex Court delivered in the case of Murarilal v. State of M.P., AIR 1980 SC 531. Though this decision was given in a criminal appeal but it applies to the civil cases while appreciating evidence of the handwriting expert. The Hon'ble Apex Court held that (Para 4):--

"An expert is no accomplice. There is no justification for condemning his opinion evidence to the same class of evidence as that of an accomplice and insist upon corroboration. True, it has occasionally been said on very high authority that it would be hazardous to base a conviction solely on the opinion of a handwriting expert. But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses -- the quality or credibility or Incredibility being one which an expert shares with all other witnesses, but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of finger-prints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand... the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher."

In view of the above decision of the Hon'ble Apex Court, the opinion of the expert cannot be discarded because of the reasons given in the judgment of Privy Council in the case of Judah (AIR 1945 PC 174) (supra) and the judgment of the Calcutta High Court in the case of Gotham Construction Co. (AIR 1968 Cal 91) (supra). In addition to above, I am of the opinion that condemning the expert as remunerated witnesses available on hire to pledge their oath in favour of the party who has paid them, appears to be absolutely unwarranted. Comparison of the handwriting and forming an opinion on the basis of the handwriting, is a science and the persons are accepting the profession of the handwriting expert and are being taught and thereafter the experts are permitted to give evidence as of handwriting expert. In most of the professions, the expert in the profession are being paid to plead the case or to perform their professional duties and simply because they accepted a particular profession where they have to give opinion on the basis of facts of the case and they have to draw inference which may be wrong, it does not mean that the expert or the professional are the witness available on hire or they can pledge their oath in favour of the party who had paid them. The science of identification of handwriting is not so perfect and there is chances of risk in relying upon the opinion of the handwriting expert then how it can be said that wrong opinion of the handwriting expert is only due to the fact that he has been paid for giving opinion."

10. After hearing counsel for the parties as well as perusing the record of the case, alongwith the judgments cited at the Bar, this Court finds that the learned Courts below have rightly passed the impugned orders, in proceeding to allow the application of the respondent no.2 to summon the handwriting and fingerprint expert, Mr. Ramesh Thakur in evidence.

11. This Court, taking into consideration the judgment of the Hon'ble Apex Court in Kalyani Bhaskar (supra) and the judgment of the Hon'ble Coordinate Bench of this Court in Ameer Mohammed (supra) is of the view that the evidence of the expert, being handwriting and fingerprint expert in the present case, cannot be held to be prejudicial, merely on the ground that the expert opinion was sought at the instance of the respondent no.2. Needless to say, both the parties shall be at liberty to examine the said witness in evidence, in order to prove their respective case before the concerned Court.

12. This Court, in light of the above observations, is of the opinion that the impugned orders passed by the learned Courts below do not suffer from any legal infirmity.

13. Consequently, the present petition fails and is hereby dismissed. All pending applications are disposed of.