
(2009) 03 JH CK 0011
In the Jharkhand High Court

Ramswaroop Sinha

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 04-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : AIR 2009 Jhar 131 : (2010) 2 BC 225 : (2009) CriLJ 4499 : (2009) 2 JCR 267

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—This writ application is directed against the order dated 22.8.2008 passed by learned Sessions Judge, Jamshedpur in Cr. Rev. No. 185 of 2008 whereby learned Sessions Judge confirmed the order dated 5.6.2008 passed by learned Judicial Magistrate, 1st Class, Jamshedpur in case No. C1-540 of 2006 wherein prayer made by the petitioner for sending cheque and the mortgage deed before an expert for examination and comparison of the signatures appearing therein with any other document having admitted signatures of the petitioner was rejected.

2. It appears that complainant-opposite party No. 2 filed a complaint case stating therein that the petitioner took a friendly loan of Rs. 1,80,000/- from the complainant-opposite party No. 2 and got a deed of mortgage executed in favour of opposite party No. 1 mortgaging one Opel Corsa Car and also handed over a cheque to the complainant with a promise to repay the loan amount within a period of six months but the petitioner failed to pay off the loan amount. However, the petitioner ask x.1 for further time to pay the debt to which the complainant agreed. liven then true petitioner failed to keep his commitment and then the petitioner at the instance of the complainant entered the date and amount over the cheque which on its presentation got dishonoured due to Insufficiency of fund on 23.3.2006. Thereafter notice was given to the petitioner

and the complaint was filed. After the appearance of the petitioner, case was taken up for trial whereby complainant examined his witnesses and closed his case on 3.7.2008. Thereafter statement of the petitioner was recorded u/s 313 of the Code of Criminal Procedure and the case was fixed for adducing defence witnesses. After more than four months defence examined on witness on 21.1.2008 and the case was fixed for further evidence and then on 4.4.2008 a petition was filed for sending said cheque as well as mortgage deed before an expert for examination of the signature appearing on it which was rejected by the court below on the ground that such petition has been filed vexatiously to delay the disposal of the case.

3. Petitioner being aggrieved with that order preferred a revision application which was also dismissed on the ground that said application for examination of the signature of the petitioner appearing over cheque and other documents have been filed in order to delay the disposal of the case and that cheque got dishonored on account of insufficiency of the fund and not on account of the fact that signature of the drawee does not tally and that signature appearing on the cheque gets tallied on bare perusal from the admitted signature appearing over the acknowledgement.

Being aggrieved with that order this writ application has been filed.

4. Learned Counsel appearing for the petitioner submits that the petitioner has been disputing genuinely of the signature over the cheque right from the beginning and, therefore, when the case was fixed for evidence of the defence witness, an application was filed for getting the signature of the petitioner examined by an expert but that was rejected by both the courts below which amounts denial of fair trial as denial of such opportunity would render the petitioner helpless in proving his innocence and to but allegation whose both the courts blow in view of the decision " rendered In a case of Kalyani Bhasker (Mrs.) v. M.S. Sampooram (2007) 1 SCC (cri) 577 should have allowed the prayer of the petitioner.

5. Having heard learned Counsel appearing for the parties, and on perusal of the record, It cannot be said in the facts and circumstances that proper opportunity was not given to the petitioner to prove his Innocence. From the order passed by learned Sessions Judge it does appear that on 1.8.2007 statement of the accused was recorded u/s 313 of the Code of Criminal Procedure and then the case was fixed for defence witness but the defence could examine his evidence only on 21.1.2008 and thereafter on 4.4.2008 an application was filed for examination of the signature which was rejected after holding that the said application had vexatiously been filed to delay the disposal of the case and at the same time the court did not find it proper to allow the prayer when it noticed that the signature of the petitioner on the cheque on bare perusal gets tallied with the signature made over the acknowledgement bearing the signature of the petitioner. Thus, there has been No reason to form other opinion when it has been" held by both the courts below that the application had vexatiously been filed for delaying the

disposal of the case and as such as In the facts and circumstances there does not appear to be denial of fair opportunity to the petitioner.

6. Under these situations, both the courts below cannot be said to have passed order contrary to the law laid down by the Hon''ble Supreme Court in the case referred to above, rather It appears to be In consonance with the view expressed by the Hon''ble Supreme court where It has been held that such prayer for examination of the signature by an expert Is liable to be rejected If It has been made to delay or for defeating the ends of justice.

Accordingly, I do not find any merit In this application. Hence, it is dismissed.