

(2017) 01 AP CK 0006
In the Andhra Pradesh High Court
Case No : 3204 of 2016

T RAJALINGAM@SAMBAM

APPELLANT

Vs

STATE OF TELANGANA AND ANOTHER

RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Code of Criminal Procedure, 1973, Section
482, Section

Citation : (2017) 01 AP CK 0006

Hon'ble Judges : B Siva Sankara Rao

Bench : SINGLE BENCH

Advocate : T V Kalayan Singh, Nagaraju Naguru

Judgement

1. The petitioner/accused maintained the revision impugning the dismissal order of the learned Magistrate dated 26.11.2016 in CrI.MP.No.276 of 2016 in C.C.No.485 of 2013, a case under Section 138 of the Negotiable Instruments Act, during trial sought for sending under Section 45 of the Evidence Act (for short the Act) Exs.P1 and P2, the so called cheques to the expert to determine the age of the ink.

2. It is based on the defence that the cheques were given in the year 2007 and those were time barred for not encashed and presented for encashment within six months therefrom and those were presented by altering or tampering the dates making as if given on the respective date and month of the year 2012, after more than 6 years and thereby the documents are to be send to the handwriting expert for comparison and determination of age of the writings. The same was since opposed on various grounds of the same is a false defence plea and an afterthought and no purpose be served having not disputed the signatures and cheques routed from his account and nothing to rebut.

3. Heard both sides and perused the material on record.

4. Undisputedly from the hearing of the matter at length Exs.D1 and D2 subject to objection if any, on behalf of the accused in the course of trial were exhibited, which are the so called Xerox copy to the originals of Exs.P1 and P2 prior to the so called cheques showing those wherein fact given in the year 2007 and that demonstrated the same were tampered in the year making as 2012. In fact, that is also when required to be compared if at all of Exs.D1 and D2 are for the same documents of Exs.P1 and P2 by expert, it is beyond the scope of the prayer in the present petition before the lower Court covered by the impugned order even for this Court to sit in revision against, irrespective of Section 73 of the Indian Evidence Act during trial or enquiry enabling the Court with absolute power of comparison and for that even to solicit the expert opinion to assist the Court by invoking Section 45 of the Act by the Court in exercise of its power under Section 73 of the Act, apart from the High Court in deciding the revision even shown not within the scope of Section 397 Cr.P.C. to entertain can consider and decide the same under Section 482 Cr.P.C. by exercising the inherent power which inheres in the High Court from its very constitution as also held by this Court in *Sun Pharmaceuticals Ltd. Mumbai v. State of Telangana* and another by referring to several expressions of the Apex Court including of the Constitution Benches, particularly of *Madhu Limaye v. State of Maharashtra* .

5. Thus, the revision is maintainable from the order is not interlocutory in nature and even otherwise, this Court under Sections 482 and 483 Cr.P.C. can entertain the proceeding if at all shown outside the purview of Section 397 Cr.P.C., apart from under Article 227 of the Constitution of India. It is in fact the settled law from the expressions of the Apex Court referred in *Sun Pharma (supra)* that merely because it is an order arisen out of an interlocutory application, it cannot be treated as interlocutory in nature once it effects the rights of the parties to the lis. However, once revision lies, the powers of revision under Section 397 Cr.P.C. are different from the inherent powers of the High Court under Section 482 Cr.P.C.

6. Once that is the principle and scope of law on power of the Court and when these documents are to be decided by an expert as to the tampering and determination of the ink and that is the valuable right of accused to establish by defence evidence and once he wants to do so as held by this Court in *M/s.S.K.Health Care Formulations Pvt. Ltd v. M/s.Globe Glass Containers* and another relying upon the expression of the Apex Court in *T.Nagappa v. Y.R.Muralidar* ; apart from the other settled expression in *M.S.Narayana Menon v. State of Kerala* relied upon in *Krishna Janardhan Bhat v. Dattatraya G.Hegde* (decided on 11.01.2008 in Appeal (crl.) No.518 of 2006) explained by the three Judge Bench in *Rangappa v. Sri Mohan* (decided on 07.05.2010 in Crl.Appeal No.1020 of 2010) in discussing in relation to the reverse onus burden on the accused, where the burden is to discharge like any other criminal case only by preponderance of probabilities, for which the Court has to afford an opportunity.

7. Here, the lower Court concluded relying upon from the observations laid down

by the Punjab and Haryana High Court in *Yash Pal v. Kartar Singh* held that age of the ink cannot be determined by expert and from the Single judge expression of this Court in *Kambala Nageswara Rao v. Kesana Balakrishna* that mere determination of age of ink, even if there exists any facility for that purpose; cannot, by itself, determine the age of the signature and thereby no purpose be served by sending the disputed cheques which contain the admitted signatures of the accused/petitioner to expert.

8. Coming to the aspect of age of ink and writings can be determined and if so done can be admitted in evidence, the counsel for the revision petitioner submits that the age of the ink and writings can be determined as per catena of expressions and if at all determined whether that can be a basis or not is a matter of appreciation of evidence with reference to the reasons assigned in the opinion of the expert. The learned counsel for the 2nd respondent while supporting the order of the lower Court contends contra.

9. Coming to the expressions relied on either side to decide the same including on corrections of the order of lower Court; a) A Single Judge expression of the Madras High Court in *A.Inayathulla v. A.Ramesh* , in a cheque bounce case, decided that the age of ink is not determinable to consider the application of accused to send the disputed cheque to determine the age of ink. It referred several expressions including of that Court. b) In fact in *Elumalai v. Subramani* another Bench of the Madras High Court in 2010-11 held referring to several authors of the age of ink and writings can be determined that the reputed authors referred aforesaid on this subject as narrated above would make it abundantly clear that it is possible to discover age of the ink. The authorities and the officials concerned thus have to take initiatives to evolve procedures for experiment with latest technology for achieving improvement on the subject on the basis of choosy and discerning performance of researches where the authors have provided procedures and devices, with reference to the names of chemicals and reagents to be utilized, to solve the issue and it is incumbent upon the experts to put the authoritative theories and the latest proved and established technologies to empirical use. They have to take the inventiveness drawing the proven and accepted principles from well settled authorities and the Government have to provide necessary latest infrastructures in the Document Division of the Forensic Sciences Laboratory and also allot necessary funds for the constitution of sophisticated laboratory which is a full-fledged one in this regard. The scientist can elect non-destructive technique, where there is no scope of destruction of disputed document. When the authorities effectively suggest various methods for subjecting a document for this purpose(to determine age of writings and age of ink), it is high time for the scientists of this State and the Government committed them in use in practice. When the science has flourished to show enormous, remarkable, striking and much advanced improvements in all other fields, while sufficient ways and means are available in this sphere, they cannot be disregarded and thrown overboard. The State shall taken every possible step to provide the justice delivery system to unearth actual evidence available in a

case. If the scientists or experts come across any difficulties, they can very well bring to the notice of the authorities concerned. At their request and proposal, the Government shall allocate necessary means. The expression that there is no scientific method available anywhere in the country or State, more particularly in the Forensic Science Department for scientific assessment of the age of handwriting to offer opinion is far from acceptance. A careful survey of the above authorities would unveil a fact that settled plans of actions for experiments are very much available and when one steps into such experiments, there is further scope for upswing in the technology. It is bounden duty of the official concerned to follow the procedures. (c) As mentioned in para 12(b) of this judgment, even anterior to the year, 1964 in a decision rendered by the Supreme Court in Shashi Kumar Banerjees Case, referred of what before the trial Court the expert had stated that the determination of the age of writings and ink could be ascertained definitely by a chemical test. It reveals that, even prior to 1964, chemical test were in application to find out age of ink. Now, the science in this branch has prospered to considerable dimensions and it cannot hereafter be contended that it is not possible to ascertain the age of the ink by scientific method and exact result could not be secured. The scientists/experts should appear before the Courts with opinionated evidence in this regard, on their successful accomplishment of this assignment. The advancements in establishing the facts in this field as a science continue through today. The explosion of modern technology has influenced every facet of our lives, from introducing new avenues of written communications to the improvements in ink and ergonomic design of writing instruments. The above said discussion on the strength of the authorities available before the Court is only indicative, not exhaustive. It is not a sole-source training manual. (d) In A.Inayathulla(supra) while referring to Elumalai (supra), referred further Yash Pal (supra) of Punjab High Court that was followed in another Single Judge expression of Madras High Court in S.Gopal v. D.Balachandran, 2008(1) Mad. LJ (Cri) 769, in saying age of the ink cannot be determined by the expert with scientific accuracy. What is stated therein is with scientific accuracy not possible, that, however does not mean not at all possible. (e) In fact in A.Inayathulla(supra), there is also an observation saying Yash Pal (supra) is outcome of a civil dispute in a civil revision by also referring to Order XXVI Rule 10 CPC to find out the age of the ink used on the stamps possible or not of the promissory note. In its observation there from of discretion has been vested from that provision referring to Section 45 of the Act also in a civil Court to get any scientific investigation only if it thinks necessary or expedient to do so. It is further observed there from in A.Inayathulla(supra) that, however, in the present case, such investigation is not likely to help to conclusively prove that the writing dated 11.2.1998 was in fact recorded earlier because the age of the ink cannot be determined on the basis of the writing.. (f) In A.Inayathulla(supra), it also referred another expression of the Madras High Court in V.Makesan v. T.Dhanalakshmi (2010(2) Mad LJ (Cri) 762), where in a criminal case on the dispute as to the age of the ink sought for determination of cheque, observed that as of now there is no expert in terms of Section 45 of the

Evidence Act available who could be in a position to offer any opinion regarding the age of the ink by adopting any scientific method. (g) In *A.Inayathulla(supra)*, it also referred other expressions of the Madras High Court in *A.Sivagnana Pandian v. M.Ravichandran*, 2011 (2) Mad LJ (Cri) 595 at para-32 and *A.Devaraj v. Rajammal*, 2011(3) Mad LJ(Cri) 440, where the High Court took the leaf of the disputed documents to be send to determine the age of the ink to the Central Forensic Department, Hyderabad, by considering in this regard the earlier expression in *R.Jagadeesan v. N.Ayyasamy*, 2010 (1) CTC 424, which referred earlier expression in *S.Gopal (supra)*. (h) Therefrom in *A.Inayathulla(supra)*, it is observed that, a reading of *A.Devaraj supra* it could be noticed that there was nothing to indicate as to whether the Court had considered as to whether such expertise, is available in the Central Forensic Sciences Laboratory, Hyderabad. So also in *Elumalai (supra)*. (i) In *A.Inayathulla(supra)*, it further referred another expression of the Madras High Court in *K.Vairavan v. Selvaraj*, 2012(5) CTC 596, where in a cheque bounce case to send the cheque to determine the age of ink, by referring to *S.Gopal (supra)*, *V.P.Sankaran v. Uthirakumar* 2009 (6) CTC 29R, *Jagadeesan (supra)*, *V.Makesan v. T.Dhanalakshmi*, *Yash Pal (supra)*, *Indira Balasubramaniam v. S.Subash*, it was observed particularly in para-2(g) (25), by referring to *R.Jagadeesan (supra)* in saying though there is scientific method available, there is no expert available who can scientifically examine particularly at the Forensic Science Department of the Government of Tamilnadu for an opinion on the age of the ink. The Central Forensic Sciences Laboratory, Hyderabad, expert attended the Tamilnadu Judicial Academy to address also stated that no expert is available and if any documents being send those were to be returned without offering any opinion and by so referring it is stated in *A.Sivagnana Pandian v. M.Ravichandran (supra)* that in Forensic Science, it is possible to ascertain the age of the ink and there is no difference of opinion to that on said possibility from the scientific development particularly from referring to the leading books which speaks about availability of scientific methods. However, knowing a method alone would not serve the purpose to implement the method as equipments are necessary with expertise knowledge. In respect of age of ink, though there are scientific methods available in India, no equipment with scientific expert is shown available. It also referred the fax message received from Assistant Director of Central Forensic Sciences Laboratory, Hyderabad, of there is no validated method in their laboratory to undertake examination to determine the relative or absolute age of the ink of the writings or signatures. (j) In para-4 of *A.Inayathulla(supra)*, it is observed referring to the expression in *R.Jagadeesan (supra)* 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 and it is a Central Government Organisation. (k) It is ultimately concluded in *A.Inayathulla (supra)* there from of there is no expert available in the country and there is no purpose that could be served in sending the cheque in question.

10. In fact this Court relied upon the Apex Courts expression in *Shashi Kumar*

Banerjee v. Subodh Kumar Banerjee at 537 observed as follows: Finally we may point out that the 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. He also admitted that he applied no. chemical tests in this case. So his opinion cannot on his own showing have that value which it might have had if he had applied a chemical test. Besides we may add that Osborn on "Questioned Documents" at p. 464 says even with respect to chemical tests that "the chemical tests to determine age also, as a rule, are a mere excuse to make a guess and furnish no. reliable data upon which a definite opinion can be based" It further observed that the time and place of execution of promissory note in dispute including as to difference in ink, opinion of handwriting expert can be sought for under Section 45 of the Act and such opinion is not totally irrelevant for adjudication of the dispute from the opinion sought for determining the age of the disputed handwriting, it is crystal clear of the handwriting as to the year of writing can be given by expert opinion is the conclusion before the Supreme Court in its approving to consider way back in 1964 and referring to it way back in 1994 this Court held opinion as to age of writing or signature can be sought from the expert. It is no doubt in relation to a civil dispute.

11. In Kambala Nageswara Rao (supra), what the learned Judge of this Court observed in a civil dispute confirming the order of the lower court dismissing the application to send the promissory note to determine the age of ink and signature saying, mere determination of the age even if there exists any facility for that purpose cannot by itself determine the age of the signature and it also referred the expression of the Karnata High Court in Ishwar v. Suresh 2010 CrI.J. 1510 in saying that same in relation to a criminal case which is different to a civil case. In fact it makes no difference when Section 45 of the Evidence Act provides to apply for both in civil and criminal cases.

12. Even there from, as per the two earlier expressions of this Court referring that of the Apex Court, it clearly shows that an expert opinion as to determine the age of writing of ink can be possible and to admit is relevant. Once such is the case it is premature to determine its evidentiary value as whether it can be basis or not but for a piece of corroboration and to what extent is ultimately to be determined from the reasons assigned in the opinion of the expert as even opinion on handwriting is a developing science and not conclusive as reiterated by the Apex Court in the recent expression (of the settled law) in SPS Rathore v. CBI at paras 27 to 30.

13. Thus, once the two expressions of this Court relying upon the expression of the Apex Court clearly show the expert opinion as to age of writing and age and difference of ink can be possible to sought for, the expressions of Madras High Court in A.Inayathulla(supra) and Punjab High Court in Yash Pal (supra) of the respective Single Judges cannot be taken to be given precedence, apart from the factum of Madras High Court in A.Inayathulla(supra) referring to earlier expressions of that Court having contained the description from learned

celebrated authors saying the possibility of giving opinion as to age of writing of any particular year and age of ink. Thereby the contention of the revision respondent of no useful purpose can be served or no opinion can be possible are untenable.

14. In fact the Apex Court in *Kalyani Baskar v. M.S.Sampoornam* having set aside the order of the Magistrate upheld in revision of dismissing the application of the accused in a cheque bouncing case and allowed the request of the accused to send the disputed signatures to handwriting expert in saying once the accused requests to send the cheque in question for hand writing expert for opinion after closure of the evidence, the Magistrate should have been granted such a request being the valuable right in defence, unless the Court thinks that the object of the application itself is vexatious or with a delay tactics. Here, from the impugned order of the Magistrate it is not such an observation.

15. The learned counsel for the revision petitioner placed reliance in Full Bench expression of this Court in *Bande Siva Shankara Srinivasa Prasad Vs. Ravi Surya Prakash Babu (died) per L.Rs. and Others* by referring to earlier Division Bench expression in *Janachaitanya Housing Limited Vs. Divya Financiers*, wherein no doubt what is held is an opinion can be solicited as to determination of the disputed signatures by comparison with signatures available not even of any contemporary relevance from long gap and further there is no time limit to file application in seeking to send the document containing a disputed signature or writing etc., to expert. There is nothing directly came for consideration therein of the age of ink and age of writing can be determined or not.

16. In fact, the Apex Court in *T.Nagappa (supra)* in a cheque bounce case on the application of the accused to send the disputed signature on the cheque to determine the age of his signature observed that when it is the contention of the accused that complainant has misused the cheque obtained and even in case where presumption under Section 118 r/w 139 of the Negotiable Instruments Act can be drawn in favour of the complainant, the accused must be granted an opportunity for adducing evidence not rebuttedly there of as to liability placed reliance on the accused and he must be given opportunity to discharge it by holding so the impugned order of the High Court was set aside and it was held that adducing evidence in support of defence is a valuable right and denial of that right means denial of fair trial and it was also pointed out that, it essential that rules of procedure are to ensure justice should be scrupulously followed and the court much less in showing there is no prejudice to them. However to subserve the ends of justice. It is there from set aside the impugned dismissal order and allowed the application of the accused to refer the disputed cheque signature to determine the age to the expert for opinion. Thus the expression says age of the signature may determine even age of the ink cannot be determined if the age of the signature is determined from the age of the ink it impliedly included therein.

17. From the above, the impugned order of the lower Court is liable to be set

aside for the same is unsustainable. No doubt there from the revision can be straight away allowed by setting aside the impugned order of the lower court and by allowing the same to send Exs.P1 and P2 to determine the age of the writing and age of the ink respectively with reasons for the same in the opinion to give by the said Forensic Laboratory, Hyderabad at Red Hills. However that is not the be all and end to pass such an order as the petitioner seeks comparison of Exs.D1 and D2 with Exs.P1 and P2 as to outcome of same documents and with what difference. For the same is also relevant to the lis, liberty to file a fresh application before the lower Court is given to the petitioner/accused herein including for determination of Exs.D1 and D2 marked subject to objection are for the self same documents Xerox copies of Exs.P1 and P2 but for the year and any corrections in Exs.P1 and P2 on age of the ink and writings and alterations if any in relation there to.

18. With the above observations, the Criminal Revision Case is allowed to entertain fresh application being filed by petitioner/accused before the lower Court to consider and pass orders, pursuant to the above observations and conclusions.

19. Miscellaneous petitions, pending if any, shall stand closed.