

Lucy Mathew Vs. State of Kerala

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Court : Kerala

Decided On : Jan-28-2014

Judge : Honourable Mr. Justice P.D.Rajan

Appellant : Lucy Mathew

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.D.RAJAN TUESDAY, THE 28TH DAY OF JANUARY 2014 8TH MAGHA, 1935 CrI.MC.No. 1987 of 2012 ()
----- ST.NO. 3180/2008 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, MUVATTUPUZHA -----
PETITIONER/ACCUSED : ----- LUCY MATHEW, THANIKUNNEL HOUSE, KALLOORKKAD KARA AND VILLAGE, MUVATTUPUZHA TALUK. BY ADVS.SRI.MATHEW JOHN SRI.DOMSON J.VATTAKUZHAY RESPONDENTS/STATE : ----- 1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. V.I.BABY, S/O.ITTAN PILLAI, VATTAKKATTU HOUSE, MARADY VILLAGE, SOUTH MARADY KARA, MUVATTUPUZHA TALUK. R1 BY PUBLIC PROSECUTOR SRI.JITHESH.R. THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 28-01-2014, THE COURT ON THE SAME DAY PASSED

THE FOLLOWING: sts CRMC.NO.1987/2012 APPENDIX PETITIONER(S)
ANNEXURES: ANNEXURE A. A TRUE COPY OF THE PETITION BEFORE THE
COURT OF THE JUDICIAL IST CLASS MAGISTRATE, MUVATTUPUZHA
DATED1309/2011. ANNEXURE B. A TRUE COPY OF THE

ORDER

DATED124/2012 IN CMP NO.50/2012 IN ST NO.3180/2008 OF THE JUDICIAL
IST CLASS MAGISTRATE COURT, MUVATTUPUZHA . ANNEXURE C. A TRUE
COPY OF THE REPLY NOTICE DATED259/2008 BY THE PETITIONER.
ANNEXURE D. A TRUE COPY OF THE DEPOSITION OF THE2D
RESPONDENT. RESPONDENTS' ANNEXURES: NIL /TRUE COPY/
P.A.TO.JUDGE sts P.D. RAJAN, J.

----- CrI.M.C.No.1987 of 2012
----- Dated this the 28th day of January, 2014

ORDER

This petition is filed under Section 482 Cr.P.C. to quash Annexure-B order passed in S.T.No.3180/2008 of the Judicial First Class Magistrate Court, Muvattupuzha. The petitioner is the accused in the above case alleging offence punishable under Section 138 of the Negotiable Instruments Act, in which the 2nd respondent is the defacto complainant. The defacto complainant was examined as PW1 and Exts.P1 to P6 were marked in the trial Court. The petitioner was questioned under Section 313 Cr.P.C. and thereafter, the Bank Manager was examined as DW1 and Exts.D1 to D3 were marked. After that, the petitioner filed CrI.M.P.No.50/2012 for sending Ext.P1 cheque with Ext.D3 specimen signature card and Ext.P5 acknowledgment card to Forensic Science Laboratory for expert opinion. The learned Magistrate, after hearing both sides dismissed the above petition. Aggrieved by that, the petitioner approached this Court to quash CrI.M.C.No.1987/12 2 Annexure-B order and to pass appropriate direction requiring the Magistrate to allow the application.

2. Heard both sides. There was no representation for the 2nd respondent.

3. The question that arises for consideration is whether Annexure-B is to be quashed at this stage. It is a specific case of the petitioner that Ext.P1 was not issued by him. He contended that the signature on the cheque was forged by the 2nd respondent. In order to prove that point, it is necessary to send the disputed cheque with admitted signature to the Forensic Science Laboratory for getting expert opinion. He is also relying on Annexure-C reply denying the signature of the cheque. It is true that the lower court compared the signature without obtaining any expert opinion. According to Section 73 of the Evidence Act, the Court has power to compare the signature or handwriting with admitted or proved signature or handwriting. But, when exercising such comparison, the Court has to follow the principles issued by the Apex Court under Section 73 of the Evidence Act. The Apex Court in *Bharathan v. Sudhakaran* [1996(1) KLT466(SC)] held as follows: Crl.M.C.No.1987/12 3 "It is true that under S.73 of the Evidence Act a disputed signature could be compared only with the admitted signature or signature proved to the satisfaction of the court to have been written or made by that person. Reliance was placed on the decision reported in *State (Delhi Admn.) v. Pali Ram* (AIR 1979 SC14 and contended that it is not advisable that a judge should take up the task of comparing the admitted handwriting with the disputed one to find out whether the two agree with each other and the prudent course is to obtain the opinion and assistance of an expert. This opinion was expressed by the Supreme Court in a criminal case while considering the question whether the accused had committed the offence of forgery and cheating. In *Fakhruddin v. State of M.P.* (AIR 1967 SC1326, the Supreme Court observed that comparison of the handwriting by the Court with the other documents not challenged as fabricated, upon its own initiative and without the guidance of an expert is hazardous and inconclusive. These observations were made in the facts and circumstances of such case. But, in the instance case, comparison of the signature found in the counterfoil are made to ascertain whether both signatures were put by the same person." 4. If the above legal principle is followed, it is sure that the petitioner can get a chance to compare Ext.P1 by an expert. Ignoring the above principle, the Court itself compared the signature and reached at a conclusion. Therefore, an interference under Section 482 Cr.P.C. is necessary and the order passed by the learned Magistrate in C.M.P.No.50/2012 is set aside. The matter is remitted to the Judicial

First Class Magistrate Court, Muvattupuzha for fresh consideration. Crl.M.C.is
allowed as above. P.D. RAJAN, JUDGE. acd Crl.M.C.No.1987/12 4
Crl.M.C.No.1987/12 5

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