

S. Gopal Vs. D. Balachandran

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Court : Chennai

Decided On : Jan-22-2008

Reported in : II(2008)BC614; 2008(1)CTC491

Judge : M. Jeyapaul, J.

Acts : Evidence Act - Sections 45; Negotiable Instruments Act - Sections 20 and 138; Code of Criminal Procedure (CrPC) - Sections 243 and 243(2)

Appeal No. : Crl. R.C. No. 1658 of 2007 and M.P. No. 1 of 2007

Appellant : S. Gopal

Respondent : D. Balachandran

Advocate for Def. : S. Jayakumar, Adv.

Advocate for Pet/Ap. : N. Manokaran, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

M. Jeyapaul, J.

1. The revision is directed against the impugned order passed by the learned Judicial Magistrate in C.M.P. No. 2915 of 2007 filed under Section 45 of the Indian

Evidence Act to send the disputed cheque for handwriting expert's opinion.

2. The petitioner is an accused in a case under Section 138 of the Negotiable Instruments Act on the file of the learned Judicial Magistrate I, Erode. He filed a petition under Section 45 of the Evidence Act to send the disputed cheque for comparison by an expert to determine the age of the ink of the signature found in the disputed cheque marked as Ex.P1 before the Trial Court. It is his contention that the signature found in Ex.P1 has been put in a different ink from that of the other particulars filled in the cheque. It is his further contention that he issued blank cheques and pronotes with his signature therein. But, the same has been filled and misused by the respondent. Therefore, the petitioner has prayed for sending the disputed cheque, Ex.P1 to the Forensic Laboratory at Hyderabad to determine the age of the ink of the signature of the petitioner. The trial court has rejected such a plea on the ground that there is no necessity to send the disputed cheque for expert's opinion as the signature found therein had been categorically admitted by the petitioner.

3. The points that arise for determination are

i) Whether the scope of Section 20 of the Negotiable Instruments Act applies to blank cheque signed by the drawer.

ii) Whether a blank cheque signed by the drawer can be filled up by a holder thereof.

iii) Whether the disputed document can be sent to an expert for ascertaining the age of the signature found therein.

4. Learned Counsel appearing for the petitioner vehemently submits that a holder of a cheque has no authority to fill up the blank cheque signed by the drawer, inasmuch as Section 20 of the Negotiable Instruments Act has no application to a cheque issued by a drawer. He would further contend that a cheque will have to be filled up and signed only by the drawer as Section 20 would apply only to the other instruments viz., pronotes and bill of exchange. As the petitioner seriously disputes the negotiability of the cheque in question inasmuch as the particulars

found in the cheque were filled up later on by the respondent to suit his convenience, a fair opportunity will have to be given to the petitioner to rebut the claim of the respondent.

5. Learned Counsel appearing for the respondent would submit that this Court has held that a blank cheque can be filled up by a holder in due course. When the signature found in the cheque is admitted, the petitioner cannot challenge the particulars filled up by the holder in due course in the cheque. At any rate, he would submit that there is no perfect science to determine the age of the ink used in a document.

6. Section 20 of the Negotiable Instruments Act reads as follows:

Inchoate stamped instruments--Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

A bare reading of Section 20 of the Negotiable Instruments act would go to show that it would apply to only a stamped instrument viz., promote and bill of exchange and not to the cheques. As per Section 20 of the Negotiable Instruments Act, the holder in due course has every authority to complete the blank promote and bill of exchange delivered to him after properly signing therein by the maker of the instrument. But, Section 20 will have no application to the blank cheques issued after signing by the drawer.

7. This Court in *Rajendran v. Usharani* 2001 LW (Crl.) 319 has observed that no law prescribes that in case of any negotiable instrument, the entire body of the

instrument shall be written only by the marker or drawer of the instrument. Once the execution is admitted, it shall be taken that the cheque was issued by the accused in favour of the complainant towards the discharge of the liability even in a case where the cheque was filled up by some other person.

8. It is to be noted that there is no reference to Section 20 of the Negotiable Instruments Act in the aforesaid authority. A general proposition has been made to the effect that there is a presumption, in case a signed cheque is delivered to the payee, that the cheque so issued by the drawer in favour of the payee is only towards the discharge of his subsisting liability.

9. The aforesaid authority does not run counter to the provision under Section 20 of the Negotiable Instruments Act. As rightly observed therein, there is no law which prescribes that a cheque shall be filled up by the drawer himself. If such proposition is accepted, no unlettered person, who knows only to sign his name, can ever be a drawer of a cheque. Further, a person who is physically incapacitated to fill up the cheque cannot also draw a cheque and negotiate it. Of course, as far as the other negotiable instruments viz., promotes and bills of exchange, there is a clear mandate under Section 20 of the Negotiable Instruments Act to the effect that such an instrument can be negotiated by the maker thereof by simply signing and delivering the same to the holder in due course giving thereby ample authority to the latter to fill up the content of the instrument as intended by the maker thereof.

10. Even in case of a cheque, as there is no clear provision in the Negotiable Instruments Act, in the light of the above discussion, the court finds that if a drawer of a cheque gives authority to the payee or holder in due course or a stranger for that matter to fill up the cheque signed by him, such an instrument also is valid in the eye of law. There is no bar for the drawer of a cheque to give authority to a third person to fill up the cheque signed by him for the purpose of negotiating the same.

11. Learned Counsel appearing for the petitioner, referred to an authority in *Kalyani Baskar v. M.S. Sampooram* : (2007)2SCC258 wherein the Honourable Supreme Court observed as follows:

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 the 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 hand-writing 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 such circumstances, the order of the High Court impugned in this Appeal upholding the order of the Magistrate is erroneous and not sustainable.

In a case where the signature of the cheque was in dispute in a prosecution under Section 138 of the Negotiable Instruments Act, the Honourable Supreme Court has observed that denial of an opportunity to the accused seeking to send the

disputed cheque for examination and opinion of handwriting expert would amount to unfair trial and deprivation of an opportunity to the accused to rebut the claim of the complainant. The aforesaid ratio cannot be extended to the facts and circumstances of this case where the signature in the disputed cheque was candidly admitted by the accused.

12. Following the aforesaid ratio, this Court has also held in P.R. Ramakrishnan v. P. Govindarajan (2007) 1 MLJ (Crl.) 1297 that when the accused disputes his signature in the cheque in question in a proceeding under Section 138 of the Negotiable Instruments Act, the court has to afford an opportunity to the accused to obtain an expert's opinion as to the genuineness or otherwise of the signature found therein. The above ratio will not apply to a case where a cheque admittedly signed by the drawer is sought to be analysed by an expert for opinion as to the age of the ink used in the cheque.

13. In Yash Pal v. Kartar Singh it has been observed that the age of the ink cannot be determined on the basis of the writing if the ink in dispute was manufactured five years prior to the date of execution of the document and used effectively on a particular date for the first time and an expert's opinion as to the age of ink will not resolve any controversy, but, it will help to create only confusion.

14. As rightly observed by the Punjab and Haryana High Court in the ratio referred to above, if an old ink is used by the person, who assisted the drawer who had already put his signature in the cheque, to fill up the matter, no useful purpose will be served if such a cheque is analysed by the expert for rendering an opinion.

15. It is found that the age of the ink cannot be determined by an expert with scientific accuracy. Further, the use of old ink manufactured long ago will definitely create a dent in the opinion furnished by an expert. Therefore, there is no necessity for sending the disputed cheque admittedly signed by the petitioner to an expert for his opinion. The order passed by the learned Judicial Magistrate I, Erode in C.M.P. No. 2915 of 2007 in C.C. No. 1287 of 2006 does not suffer from any illegality or impropriety. Therefore, there is no warrant for interference with the well considered order passed by the Trial Court.

16. In view of the above, the order passed by the learned Judicial Magistrate is confirmed. The criminal revision case stands dismissed. The connected Miscellaneous Petition also stands dismissed.

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