

Benjamin Vs. State

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Court : Chennai

Decided On : Mar-06-2013

Judge : S. Palanivelu

Appellant : Benjamin

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

06. 03.2013 CORAM: THE HON'BLE MR.JUSTICE S. PALANIVELU
CRL.R.C.NO.302 of 2013 and M.P.No.1 o

1. Benjamin @ Kumar 2.Krishnan 3.Suresh @ Sureshkumar .. Petitioners vs. State rep.by Inspector of Police, Malliakarai Police Station Salem District (Cr.No.280 of 2010) .. Respondent Petition filed under Section 397 and 401 of Cr.P.C to set aside the order dated 08.02.2013 passed in CMP No.174/2012 in S.C.No.204 of 2011 on the file of the learned II Additional District Sessions Judge, Salem. For petitioner : Mr.K.V. Sridharan For respondent : Mr.C. Emilias Government Advocate (Crl.Side) ORDER The petitioner is one among the three accused, filed an application u/s 73 of Indian Evidence Act in the case in S.C.No.204 of 2011 pending on the file of the II Additional District Sessions Judge, Salem, with a prayer to send Ex.P.4 the report of V.A.O. and Ex.P.21 the Inquest Report prepared by the Investigating Officer to the handwriting expert for comparison of hand writing in both records and such comparison would be

enlightened the fact that both Exs.P.4 and 21 were written by the same person who is the police personnel.

2. The request of the petitioner was opposed by the prosecution by stating that the petition is filed only to protract the proceedings that the Court can compare the documents to decide the application.

3. The learned trial Court judge after hearing both sides, dismissed the application by observing that whether both the documents had been written by one and same person can be decided only on the basis of evidence of the concerned witnesses and Court can also compare the handwritings. Hence, this petition.

4. The investigation in this case has supported with an extra judicial confession allegedly given by one of the accused by name Suresh to P.W.5, Village Administrative Officer. It is the evidence of P.W.5 that his assistant by name Naidatham wrote Ex.P.4 statement. As far as the Inquest Report in Ex.P.21 is concerned, it is the evidence of P.W.17, Investigating Officer that as per his instructions, Head Constable Jayaraman wrote the Inquest Report. He denies the suggestion that both Exs.P.4 and 21 were written by the same police Head Constable.

5. The learned counsel for the petitioner Mr.K.V. Sridharan would submit that inasmuch as the practice of comparing of signatures are in before the Court has been discouraged by Superior Courts, that on the basis of the findings, the request of the petitioner could not be turned down and that even though the Court is competent to compare handwritings u/s 73 of Evidence Act, still, without the opinion of the expert the Court cannot reach a definite conclusion with regard to the comparison of signatures.

6. In support of his contention he relies upon a judgment of this Court reported in 2010 (2) L.W.CrI.1165 [M/s. Sivanandha Steel Ltd., v. M/s. Upasana Finance Ltd.,] wherein the learned Judge has followed two decisions of the Honourable Supreme Court and observed as follows: "9. The Hon'ble Apex Court in State of Maharashtra V. Sukhdeo Singh reported in AIR 199.SC 2100.has held as hereunder : "Court should be slow to compare disputed document with admitted

document for comparison although section 73 empowers the Court to compare disputed writings with the specimen/admitted documents shown to be genuine. Prudence demands that Court should be extremely slow in venturing an opinion on the basis of mere comparison, more so, when the quality of evidence in respect of specimen/admitted writings is not of high standard." 10. The Hon'ble Apex Court in *Ajit V. State* reported in AIR 199.SC 325.has held that, "Therefore, despite no legal bar to Judge using his eyes, the Judge should hesitate to base his findings with regard to identity of handwriting solely on comparison made by himself."" 7. Contending contra, the learned Government Advocate (Crl. Side) Mr.C.Emilias would submit that the present attempt on the part of the petitioner is only to protract the proceedings in which no useful purpose will be served, that the Court is undoubtedly empowered and entitled to compare signatures by virtue of Section 73 of the Evidence Act and that the circumstances of the case do not warrant referring the matter to the hand writing expert.

8. In this context the view expressed by the Apex Court have to be referred and followed. As far as the decisions of Supreme Court referred by the learned Judge in the above decisions, the Honourable Supreme Court held that though section 73 empowers the Court to compare disputed writings with the specimen/admitted documents shown to be genuine the Court should be extremely slow in venturing such opinion and that the Court should not independently base its decision only upon the comparision made by it.

9. In an earlier judgment of the Supreme Court reported in (1980) 1 SCC 70.[*Murari Lal v. State of Madhya Pradesh*] it is observed that where there are expert opinions, they will aid the Court and where therer is none, the Court will have to seek guidance from some authoritative textbooks and the Court's own experience and knowledge.

10. In (1999) 6 SCC 10.[*K.S. Satyanarayana v. V.R.Narayana Rao*] the Apex Court has expressed its view that the trial Court could have also conmpared the signature of the 1st defendant as provided in Section 73 of the Indian Evidence Act.

11. In a Division Bench decision of this Court reported in 2006 (3) CTC 3.[Central Bank of India v. Antony Hardward Mart] the learned Judges have referred a decision of Supreme Court in K.S. Satyanarayana v. V.R. Narayana Rao [1999 (6) SCC 104].wherein it is held that when the defendant denies his signature in all the documents shown to him, the trial Court could have compared the signatures of the defendant as provided in Section 73 of the Indian Evidence Act.

12. After thorough perusal of the materials on record and also following the judicial pronouncement of Honourable Supreme Court, I come to the conclusion that the Court would also compare signatures by its own experience and circumstances and record its opinion.

13. In view of the above said decisions the necessary corollary would be that the Court has to consider of the circumstances of the case by its own experience and form opinion along with his comparison of handwritings/signatures and to record its opinion. In such view of the matter, there is no necessity to refer the matter to the handwriting expert. There is no infirmity either legally or factually in the Order challenged before this Court. The revision is devoid of merits and which suffers dismissal.

14. In fine, the Criminal Revision Case is dismissed. Consequently, connected M.P.is closed. 06.03.2013 ggs Index :yes Website:yes To 1. The II Additional District Sessions Judge, Salem.

2. The Public Prosecutor, High Court, Madras. S. PALANIVELU,J., ggs CRL.R.C.No.302 o

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