REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1353 OF 2009
[Arising out of S.L.P.(Crl.)No.6278 of 2007]

G. Someshwar Rao .....Appellant

Versus

Samineni Nageshwar Rao & Anr. .....Respondents

W I T H

CRIMINAL APPEAL NO. 1354 OF 2009
[Arising out of S.L.P.(Crl.)No.6838 of 2007]

J U D G M E N T

S.B. SINHA, J.

1. Leave granted.

2. Challenge in this appeal, which arises out of S.L.P.(Crl.)No.6278 of 2007 is to a judgment and order dated 22nd August 2007 passed by a learned Single Judge of the High Court of Andhra Pradesh whereby and whereunder a revision application, filed by the appellant herein, arising out of a judgment and order dated 07th April 2007 passed by the Ist Additional

Judicial Magistrate of First Class, Khammam dismissing an application filed by the appellant for sending the disputed pronote and the cheque for examination of a handwriting expert, was dismissed.

3. According to the appellant, an agreement to sell was entered into in terms whereof one Bangi Venkanna and Y. Satyanarayana, brother-in-law of the 1st respondent agreed to purchase the appellant's share of the suit land for a total consideration of Rs.12,00,000/- (Rupees twelve lacs) and out of the said amount, a sum of Rs.4,00,000/- (Rupees four lacs) was paid by way of advance. According to him, as the said agreement could not be given into effect to, the same stood cancelled vide another agreement dated 22nd August 2004 and the disputes stood amicably settled.

4. However, first respondent herein filed a complaint petition, being C.C.No.77 of 2005, against the appellant for commission of an offence under Section 138 of the Negotiable Instruments Act, 1881 on the premise that the appellant had executed one pronote on 21st October 2002 for a sum of Rs.5,00,000/- (Rupees five lacs). It was also alleged that he also issued a cheque bearing no.400707 on 25th October 2004 for another sum of Rs.6,00,000/- (Rupees six lacs) purportedly in favour of the 1st respondent drawn on State Bank of Hyderabad, Suryapet Branch. The said cheque, according to the said respondent, when presented before the bank for having been honoured, was returned with the remarks 'Insufficient Funds'.

5. Appellant contended that the said pronote as also the cheque were forged and fabricated. He also denied and disputed execution of the said cheque. He, therefore, filed an application for examination of the said pronote as also the cheque, which were marked as Exs.P-1 and P-2 respectively, by a handwriting expert.

The said application, being Crl.M.P.No.757 of 2007 in C.C. No.77 of 2005, however, was dismissed by an order dated 07th April 2007 by the learned 1st Addl. Judicial Magistrate, relying on a decision of the High Court of Andhra Pradesh being Renu Devi Kedia v. Seetha Devi reported in 2004(6) ALT 429 and another decision reported in 2005(1) ALD (Crl.) 161 (AP), stating :

> "12. In view of the decision of our own Hon'ble Court referred to above, there is every possibility for a party to disguise his signatures and as the transaction under Ex.P1 does not relate to Exs.P-1 and P-2, the same cannot be taken as an admitted document for comparison of the signatures of the petitioner / accused. Therefore, I see no useful purpose will be served in sending Exs.P-1 and P-2 to the Expert for comparison. Hence, I do not find any valid reason to allow this petition and accordingly, the petition is dismissed."

6. The High Court, as noticed hereinbefore, by reason of the impugned order dated 22nd August 2007, dismissed the revision application filed against the said order being Crl.M.P.No.757 of 2007, stating:

> "On a perusal of the evidence of P.W.1, it is clear that P.W.1 has specifically stated that Ex.P1-pronote and Ex.P2-cheque were executed by the accused. That evidence has not been challenged in the cross-examination, except putting a suggestion that one Venkanna put his signature in the name of the accused. There is no specific denial that the accused did not sign on Exs.P1 and P2. Therefore, the petition under Section 45 of the Indian Evidence Act is purported to have been filed only to drag on the matter. The calendar case is of the year 2005 and in the absence of any specific denial with regard to the execution of Ex.P1-pronote and issuance of Ex.P2-cheque, the question of sending those documents to the expert for comparison with the admitted signatures does not arise. The trial Court has rightly dismissed the said petition, and therefore, I am of the view that the order under challenge does not suffer from any legal infirmities so as to call for interference by this Court, and as such, the present Criminal Revision Case is liable to be dismissed."

Appellant, however, on or about 20th June 2007 filed another application, being Crl.M.P. No.1325 of 2007 in C.C. No.77 of 2005, for the same purpose which, by reason of an order dated 04th July 2007, was dismissed by the said learned Magistrate, *inter alia*, holding :

> "As rightly pointed out by the learned counsel for the respondent/complainant, this court dismissed the petition in Crl.M.P.No.757 of 2007 by its order dated 7-4-2007 by turning down the request of the petitioner to send Ex.D1 documents to the Handwriting Expert by holding that Ex.D1 does not relate to Exs.P1 & P2 and, therefore, the same cannot be taken as an admitted documents for comparison of the signatures of the petitioner."

7. Revision application filed by the appellant thereagainst has also been dismissed by the High Court by a separate order passed on the same date, viz., 22nd August 2007 in Crl.Revision Case No.995 of 2007 which has also been challenged by the appellant by filing a separate Special Leave Petition being S.L.P.(Crl.)No.6838 of 2007.

8. Mr. C. Mukund, learned counsel appearing on behalf of the appellant would submit that having regard to the fact that the accused is entitled to a fair trial, his application for examination by an expert within the meaning of Section 45 of the Indian Evidence Act, 1872 for the purpose of establishing that a document, whereupon the prosecution rests its case, being not genuine, the court was under a constitutional obligation to ensure that he is permitted to take all defences.

Strong reliance in this behalf has been placed on judgments of this Court in the case of Kalyani Baskar (Mrs.) v. M.S. Sampoornam (Mrs.) (2007) 2 SCC 258 and in the case of T. Nagappa v. Y.R. Muralidhar (2008) 5 SCC 633.

We may place on record that in spite of service no one has entered appearance on behalf of respondent no.1.

9. Indisputably, an accused is entitled to a fair trial which is a part of his fundamental right as guaranteed under Article 21 of the Constitution of India. The concept, however, cannot be put to a straight jacket formula. A court of law will have to consider each application filed by an accused praying for comparison of his signature on a disputed document with his admitted signature on its own merits. No hard and fast rule can be laid down therefor.

10. Section 243 of the Code of Criminal Procedure, 1973 provides for grant of an opportunity to the defendant to lead evidence in his defence as also to file a written statement, sub-section (2) whereof reads as under :

> "**243. Evidence for defence.-** (1) … … …
>
> (2) If the accused, after he had entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:
>
> Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3) … … …"

The right of an accused under sub-section (2) of Section 243 of the Evidence Act is, thus, not an absolute one. He cannot take recourse thereto for the purpose of delaying the proceedings. An application filed by an accused must be for subserving the cause of justice and not for subverting the same.

11. In the case of Kalyani Baskar (supra), this Court held as under :

> "12. Section 243(2) is clear that a Magistrate holding an inquiry under CrPC 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 handwriting 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 that case, the Magistrate having declined to send the document for the examination and opinion of the handwriting 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 or procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them. …."

The said decision has been followed by this Court in the case of T. Nagappa (supra) opining :

> "**8.** An accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognized by Parliament in terms of sub-section (2) of Section 243 of the Code of Criminal Procedure, ….."

12. In this case, the pronote was issued in the year 2002. The cheque was issued in the year 2004. The complaint petition was filed in the year 2004. The complainant examined his witnesses in between the period September 2006 and February 2007. Appellant examined his own witnesses. They had been cross-examined. The learned Magistrate noticed that even the legal notice served upon him was not accepted by the appellant. The court, in the aforementioned situation, held that the gap between execution of two signatures is such where some variance is possible. Rightly or wrongly, his application was dismissed by an order dated 07th April 2007. Immediately thereafter another application was filed on 20th June 2007 which was not

maintainable as allowing the same would have amounted to recall of an order passed by the learned Magistrate himself being impermissible in law. In the latter application only the document which was to be sent for comparison was changed.

13. Evidently, he had filed two successive applications; the second application was, thus, not maintainable. This itself goes to show that he intended to delay the disposal of the matter. He could have examined his own expert. He may still do so for which, we are sure, the court shall grant him reasonable opportunity. Even now, the court will be entitled to exercise its jurisdiction, if it so thinks fit and proper in terms of Section 73 of the Indian Evidence Act.

14. Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that the interest of justice would be subserved if an opportunity is granted to the appellant to examine an expert at his own costs. If he requisitions the services of an expert, the learned Judge would grant him an opportunity to examine the disputed documents, submit a report and examine himself as a witness in the case preferably on the same date. Such a step, however, must be taken by the appellant within six weeks from date.

15. With the aforementioned observations and directions, these appeals are dismissed.

……..……..…….J.
[S.B. Sinha]

..……..…….J.
[Cyriac Joseph]

New Delhi.
July 29, 2009.