

Madras High Court
K.Vairavan vs Selvaraj on 18 July, 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18/07/2012

CORAM
THE HONOURABLE MR. JUSTICE A.ARUMUGHASWAMY

CrI.R.C.(MD) No.265 of 2012
and
M.P.(MD) No.1 of 2012

K.Vairavan

... Petitioner

Vs.

Selvaraj

... Respondent

PRAYER

Petition filed under Section 397 R/W 401 of the Code of Criminal Procedure Code against the order dated 06.06.2012 made in CrI.M.P.No.3397 of 2012 in S.T.C.No.672 of 2009 on the file of the Judicial Magistrate, Periyakulam.

!For petitioner ... Mr.S.Kadarkari

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:ORDER

The Criminal Revision Petition has been filed by the petitioner/accused against the order dated 06.06.2012 made in CrI.M.P.No.3397 of 2012 in S.T.C.No.672 of 2009 on the file of the Judicial Magistrate, Periyakulam.

2. The facts of the case are that the petitioner is the accused and the respondent is the complainant in the case. The respondent alleges that the petitioner has committed an offence punishable under Section 138 of the Negotiable Instruments Act. According to the petitioner, the cheque in question was not signed and issued by him to the respondent. It is his further contention that there was neither legally enforceable debt nor liability on the part of the petitioner impelling him to issue the cheque in question.

3. During trial of the case, the petitioner made an application to the learned Magistrate to forward the cheque in question for opinion from a handwriting expert. Accordingly, the learned Magistrate forwarded the admitted signatures of the petitioner along with the disputed cheque for the purpose of comparison by an expert. On such comparison, the expert gave opinion that the disputed signature on the cheque would have been made by the petitioner. The said expert was examined as R.W.2 before the trial court. After the expert's opinion, the petitioner again filed a petition in Crl.M.P.No.3397 of 2012 requesting the court to forward the same disputed cheque to an expert for the purpose of finding out the age of the ink used for the writings. In fact, the endeavour of the petitioner is to prove that the cheque would not have been drawn as on the date mentioned thereon. That petition was dismissed by the learned Magistrate by order dated 06.06.2012. Challenging the said order, the petitioner has come up with this revision petition.

4. The vehement contention raised by the learned counsel for the petitioner in this revision is that the opinion already given by the Forensic Department that the signature found on the document would have been made by the accused need not in any manner be helpful for the court to come to a right conclusion.

5. According to the learned counsel for the petitioner the said opinion is only to the effect that the disputed signature was made by the accused. There is no opinion already given that the said signature and the writings on the disputed cheque would have been made as on the date mentioned in the document. Further, according to the learned counsel, unless, the document is subjected to examination by an expert to find out the age of the ink and the writings, the petitioner would not be in a possession to prove his case. Thus, as a part of fair trial, according to the learned counsel, the cheque in question should be sent for examination by an expert to offer his opinion regarding the age of the ink and the writings. The learned counsel has relied on a few judgements of this court.

6. Before proceeding further on facts, let us have a quick survey of the judgements from this Court on this aspect.

7. In *S.Gopal v. D.Palachandran*, 2008 (1) MLJ (Crl) 769, a question arose before this Court as to whether the age of the ink used for the writings on the disputed document could be ascertained by an expert in the Directorate of Forensic Sciences, Chennai. The learned single Judge [Justice M.Jeyapaul] after having considered the said question held that there is no scientific expert available in the State with the Directorate of Forensic Science to scientifically test and find out the exact age of any such writing.

8. In the above said judgement, the learned Judge has taken note of the fact that there is no expert available in the State of Tamil Nadu and, therefore, the document cannot be sent anywhere in this State for the purpose of scientific examination to find out the age of the ink used for the writings. The learned Judge did not say that there is no method at all available for the purpose of giving an expert opinion in respect of the age of the ink. Subsequently, the very same question came up for consideration before yet another Judge of this Court [Justice S.Palanivelu] in *V.P.Sankaran v. R.Uthirakumar*, AIR 2009 Mad 166. In that case, the learned Judge held that the document could be sent for examination by an expert in the Directorate of Forensic Sciences, Chennai to offer his

opinion about the age of the ink used to draw the disputed documents. Thus, there were two conflicting judgements on the same subject.

9. These two judgements came to be considered by yet another judgement [Justice S.Nagamuthu] in R.Jagadeesan v. N.Ayyasamy, 2010 Cri.L.J.2917 : 2010 (1) CTC 424. In that case, after having considered the above two conflicting views taken by two different learned Judges, the learned single Judge had summoned the Assistant Director, Document Division, Forensic Science Department, Government of Tamil Nadu, Chennai, to the Court. The said expert is the Head of the Department of the Document Division of Forensic Science. The said expert informed the court that there is no scientific method available anywhere in the State, more particularly, in the Forensic Science Department to scientifically ascertain the age of any writing and to offer opinion. The learned Judge has further recorded that the said expert informed the Court that there is one institution known as Neutron Activation Analysis, BARC, Mumbai, where there is facility to find out the approximate range of the time during which the writings would have been made. It is a Central Government Organisation confined only to atomic research.

10. Having considered the above statement made by the Assistant Director, the learned Judge again held that there is no expert in the State of Tamil Nadu. Therefore, the learned Judge concurred with the view taken by Justice M.Jeyapaul.

11. In the same judgement, the learned Judge has held in para 10 as follows:-

"10. Now I have to consider the judgements relied on by the learned counsel on either side. In T.Nagappa's case reported in (2008) 5 Supreme Court Cases page 633, I have to state that the question whether the age of the writings could be scientifically examined and any opinion in this regard could be offered never came up for consideration before the Hon'ble Supreme Court. In that case, the Hon'ble Supreme Court was concerned with the right of the accused to have fair trial so as to send the document for comparison by an expert. It was never argued before the Hon'ble Supreme Court that there are no experts available to examine the age. Therefore, the Judgement of the Hon'ble Supreme Court relied on by the respondents is not in any manner helpful to them. The learned counsel for the petitioner has relied on the Judgement of this Court in S.Gopal's case wherein Hon'ble Mr.Justice M.Jeyapaul has held that there is no method to find out the age of the document with scientific accuracy. However, the learned counsel appearing for the respondents would submit that this Judgement was prior to the Judgement of the Hon'ble Supreme Court. He would therefore submit that subsequently in another Judgement reported in 2009 INDLAW MAD 1077 (V.P.Sankaran Vs. R.Uthirakumar), this Court has directed to forward the document for such opinion. In my considered opinion, a careful reading of the said Judgement would also go to show that there was no occasion for the learned Judge to answer the question as to whether there is any expert available in terms of Section 45 of the Evidence Act to offer any opinion regarding the age of the document. The entire case proceeded under the premise as though there are experts to offer opinion regarding the age of the documents. Now, as I have already stated, the Head of the Department of Forensic Science is before me and from whom I have the benefit of ascertaining that there is no expert in the field and also that all such documents sent already were returned without offering any opinion. Therefore, the said Judgement also would not come to the help of the

respondents."

12. After the said judgement, it appeared that the issue was almost settled. Once again, the very same question was raised before the same learned single Judge [Justice S.Nagamuthu] in V.Makesan v. T.Dhanalakshmi, 2010 (1) Crimes 833: 2010 (1) LW (CrI) 879. The learned counsel, who appeared for the petitioner therein, had relied on the judgement of the Hon'ble Supreme Court in Union of India v. Jyoti Prakash, AIR 1971 SC 1093 wherein in paragraph 10 of the judgement, the Hon'ble Supreme Court has held as follows:-

"10. After consultations between the Ministry of Home Affairs and the Ministry of Law, the Home Ministry sent certain old writings of the year 1904, 1949, 1950 and 1959, and requested the Director to determine the age of the writing of the disputed horoscope and marginal note in the almanac by comparison. The Director on April 17, 1965 wrote that it 'was impossible to give any definite opinion by such comparisons particularly when the comparison writings were not made with the same ink on similar paper and not stored under the same conditions as the documents under examination', and that it 'will not be possible for a document expert, however reputed he might be, anywhere in the world, to give any definite opinion on the probable date of the horoscope and the ink writing in the margin of the almanac'."

The learned senior counsel for the petitioner therein had also cited Yash Pal v. Kartar Singh, AIR 2003 P & H 344 wherein also similar view had been taken. Having considered all the above judgements, while rejecting the plea for sending the document for expert opinion, the learned Judge in paragraph 7 has held as follows:-

"7. A perusal of all the above judgements would go to clearly indicate that as of now, there is no expert in terms of Section 45 of the Indian Evidence Act available who could be in a position to offer any opinion regarding the age of the ink by adopting any scientific method. In view of all the above, I am inclined to interfere with the order of the learned Sessions Judge, Fast Track Court No.III, Coimbatore."

13. The very same question again cropped up for consideration before yet another learned single Judge [V.Periya Karuppiah.J.,] in Indira Balasubramaniam and others v. S.Subash (C.R.P.NPD No.3082 of 2008 dated 17.08.2009) wherein the learned Judge in para 16 has held as follows:-

"16. In view of the judgement of this Court discussed earlier there would not be any purpose in sending the impugned cheques for examination to ascertain its age of the ink used for filling up its particulars and signatures put up therein. Therefore, the request of the petitioners to send the cheques through an Advocate Commissioner for Expert's opinion as to the age of the ink cannot be ordered since it does not result in any scientific accuracy. The lower Court had not discussed these points but correctly rejected the claim of the petitioners. Therefore, this Court is not inclined to interfere with the findings of the lower Court and accordingly, the Revision fails and the same is dismissed."

14. In *Decon Construction v. J.A.Stephen and Krishnammal* 2011 (3) RCR (Civil) 481 : 211(2) RCR (Criminal) 628 yet another learned single Judge [Justice S.Tamilvanan] while considering the said question took a view, on facts, that seeking an order to send the cheque once again to find out the age of the ink has no relevance to decide the issue. In that judgement also, the learned Judge held that there is no expert in the State, who can offer an opinion regarding the age of the ink.

15. Subsequently, the very same question came up for consideration before yet another learned single Judge [Justice S.Palanivelu] in *A.Sivagnana Pandian v. M.Ravichandran*, 2012 (1) RCR (Criminal) 471 : Manu/TN/4000/2010. Before the learned Judge, earlier judgements, more particularly, the judgement in *R.Jagadeesan's* case cited supra was also relied on. When it was argued before the learned Judge, he was not convinced with the conclusion arrived at earlier on the said question by yet another learned Judge of this Court. In that judgement, the leaned Judge has referred to a number of authoritative books on Forensic Sciences and finally held that there are scientific methods available for the purpose of finding out the age of the ink found on the document. However, I find that in the said judgement, the learned Judge has not specified the expert to whom the document is to be sent for the purpose of offering opinion regarding the age of the ink used on the document. In paragraph 32 of the judgement the learned Judge has concluded as follows:-

"32. In view of the above said study and discussion, I am fortified in my view that the disputed document has to be referred to the expert for ascertaining the age of the ink and practical hardships, if any, sustained by the expert shall be brought to the notice of the Court and the Court shall thereafter act according to the settled principles and procedures, in affording appropriate opportunity to the accused to prove his defence. Hence, interference with the order challenged before this Court has become inevitable, which is set aside. The revision deserves to be allowed."

16. After the said judgement, once again, a number of petitions were filed before various courts across the State for sending the documents to Forensic Science Department for opinion regarding the age of the ink used on the disputed document.

17. The same question once again poked its nose before this Court in *A.Devaraj v. Rajammal*, 2011 (1) LW (CrI) 297. In the said case, before the learned Judge [Justice G.M.Akbar Ali], earlier judgement in *R.Jagadeesan* authored by yet another learned Judge (Justice S.Nagamuthu) and the judgement in *C.R.P. (PD) NO.1475 of 2010* dated 02.11.2010 authored by yet another judge (Justice R.S.Ramanathan) were cited. Having considered the above, the learned Judge in paragraph 12 has held as follows:-

"12. In my considered opinion, the latest judgement of the learned Single Judge of this Court in *CRP (PD) NO.1475 of 2010* is not a contradictory judgment to the earlier judgment of the learned Single judge in the case of *R.Jagadeesan v. N.Ayyasamy and another*, reported in 2010 (1) CTC 424. Hon'ble R.S. Ramanathan J. has differentiated the earlier judgment of Hon'ble S. Nagamuthu J, and has ordered sending the document to be examined by the CFSL, Hyderabad as they claim the facility is available."

Further in para 15 of the judgement, the learned judge has held as follows:- "15. The revision petitioner is directed to submit his admitted signature as stated above within a period of two weeks from the date of receipt of a copy of this order before the lower court. The lower court is directed to send both the documents to the Central Forensic Science Laboratory, Directorate of Forensic Science as stated above. The lower court is directed to fix the remuneration to the Advocate Commissioner and also for the expenses for comparison. If the revision petitioner fails to produce the admitted signature for comparison as stated above within the stipulated period, the revision petitioner is not entitled to ask for sending the documents for comparison. Consequently, the connected MPs are closed."

18. After the said judgement, this Court is informed that a number of petitions were filed again in various court across the State for sending the disputed documents to Central Forensic Sciences Laboratory, Directorate of Forensic Sciences. According to the learned Judge though it may be true that there is no expert in the State, the learned Judge was informed that there was an expert in the Central Forensic Sciences Laboratory. It is because of this though the learned Judge had concurred with the view taken in R.Jagadeesan's case cited supra, had directed the document to be sent for examination in the said Laboratory.

19. It is in these circumstances, the same question, almost vexed, has again come up before me for consideration. The learned counsel for the petitioner, as I have already stated, pointed out, has contended that the document should be forwarded to the expert attached to the said Laboratory.

20. Very recently, the President of Central Forensic Science Laboratory, Hyderabad, Andhra Pradesh State was invited to give a lecture in the Tamil Nadu State Judicial Academy at Chennai on the subject "disputed document". During the course of interaction, a question was posed to him - Is there any expert available for offering opinion regarding the age of the ink used for writing the disputed document? - In categorical terms, he informed that there is no such expert available not only in his Laboratory but in any Laboratory throughout the country at present and, therefore, it is not at all possible to offer any opinion regarding the age of the ink used in the disputed document. When a specific query was made during interaction to the President as to what had happened to the documents already sent to his Laboratory seeking such opinion, he said that the said documents were only returned without offering any opinion.

21. Now, in order to ascertain as to whether there is any expert really available in the said laboratory since the request is to send the disputed document to the said laboratory in Hyderabad, this Court through the Registrar called for remarks from the said laboratory in Hyderabad. The Assistant Director and Scientist 'C', Central Forensic Science Laboratory, Hyderabad, has given his remarks through fax message to this Court vide Ref. CFSL(H)DOC/MISC/2012-13 wherein he has stated as follows:-

"This is to submit that as there is no validated method, this laboratory does not undertake the examination for determining the relative/absolute age of the ink of the writings/signatures."

From the above fax message from the Central Forensic Science Laboratory, Hyderabad, it is crystal clear that there is no expert available in the said Laboratory also to offer any opinion regarding the age of the ink.

22. Now, the learned counsel for the petitioner is not in a position to point out that there is any such expert available in this Country. Therefore, it is not at all possible to forward the document in question anywhere for the purpose of getting opinion regarding the age of the ink used for writing the disputed document.

23. In this regard, I would like to state that the opinion of an expert is relevant in any proceedings as per Section 45 of the Indian Evidence Act, 1872. Section 45 of the Indian Evidence Act reads thus:-

"45. Opinion of experts.- When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art or in questions as to identity of handwriting or finger impressions are relevant facts.

Such persons are called experts.

Illustrations

(a) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the Act, or that he was doing what was either wrong or contrary to law. The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is whether A wrote a certain document. Another document is produced which is proved or admitted to have been written by A. The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant. "

24. A reading of the above provision would make it crystal clear that an expert is the one who has got special skill in science or art or in questions as to identity of handwriting or finger impressions. Here the identity of handwritings and finger impressions would denote an expert who can compare the disputed handwriting or finger impression with the admitted handwriting or finger impression. Such experts are available and, therefore, the documents are sent to those experts for opinion. But, there is no such expert available in India to offer any opinion regarding the age of the ink used for writing the disputed document so as to satisfy the requirements of Section 45 of the Evidence Act.

25. In this regard, we may come back to the judgement of Justice S.Nagamuthu in R.Jagadeesan's case cited supra, wherein it is not the view taken by the learned Judge that there is no scientific method available for ascertaining the age of the ink used for writing the disputed document. The learned Judge has only held that there is no expert available, who can scientifically examine the same. Even now, the learned Judge had ascertained from the Forensic Science Department, Government of Tamil Nadu, Chennai, that there is no expert, who can offer such opinion. Now, the Assistant Director, Central Forensic Laboratory, Hyderabad has also stated that there is no such expert available anywhere in India. Thus, it is crystal clear that, as of now, there is no expert available in India. In A.Sivagnana Pandian's case cited supra, Justice S.Palanivelu has stated that in Forensic Science it is possible to ascertain the age of the ink. Regarding such conclusion arrived at by the learned Judge, I have no different opinion. Science has developed so much and that it is possible. As per the leading books referred to by the learned Judge, there is a scientific method available. But, knowing a method alone would not serve the purpose to implement the method. Equipment's are necessary and person with the expertise knowledge is also necessary. If only there is a person who has special skill in the field who is armed with sufficient equipment's, then only he can use the known scientific method to offer his opinion. But, in respect of age of the ink though there are scientific method available in India, there is neither such scientific expert available nor equipment available. It is because of these reasons, I have to necessarily hold that for getting an opinion regarding the age of the ink, the disputed document cannot be sent anywhere as of now. I would make it clear that in future, if any expert emerges and equipment's are also made available, then, after identifying him, the court may forward the disputed documents to him for opinion. Until such time, the document cannot be sent anywhere for the purpose of getting opinion regarding the age of the ink used for writing the disputed document.

26. Now coming back to the facts of the present case, the defence of the petitioner/accused is that the signature in the disputed cheque was not made by him. But, already, R.W.2 an expert has offered opinion that it would have been made only by him. It is only as an after thought that he has filed the present petition for forwarding the document to ascertain the age of the ink. This in my considered opinion is only a devise to unnecessarily drag on the proceedings. Thus, the criminal revision petition fails and the same is liable to be dismissed.

27. In the result, the criminal revision petition is accordingly dismissed. Consequently, the connected Miscellaneous Petition is also closed.

ssl/gr To The Judicial Magistrate, Periyakulam.