

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 2407 of 2015

Date of Decision: 08.04.2015

Virender Bhati and others

.....Petitioners

Vs.

Ram Kishore and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Aditya Jain, Advocate,
for the petitioners.

SABINA, J.

Petitioners have filed this petition challenging the order dated 17.03.2015.

Learned counsel for the petitioners has submitted that expert examined by both the sides had given conflicting opinions, therefore, it was necessary to get the alleged signatures of the plaintiffs on the endorsement of the agreement to sell in question examined from Central Forensic Institute. Learned counsel for the petitioners has placed reliance on decision of the Hon'ble Supreme Court in case titled as **Ajay Kumar Parmar** vs. **State of Rajasthan** 2012 (12) SCC 406, wherein it was held as under:-

“The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the Court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitting writing and then from applying its own observation to prove the said

handwritings to be the same or different, as the case may be, but in doing so, the Court cannot itself become an expert in this regard and must refrain playing the role of an expert, for the simple reason that the opinion of the Court may also not be conclusive. Therefore, when the Court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwriting, the Court must keep in mind the risk involved, as the opinion formed by the Court may not be must keep in mind the risk involved, as the opinion formed by the Court may not be conclusive with the subject. The Court, therefore, as a matter of prudence and caution should hesitate or be slot to base its findings solely upon the comparison made by it. However, where there is an opinion whether of an expert, or of any witness, the Court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision.”

Learned counsel for the petitioners has also placed reliance on decision of the Hon'ble Supreme Court in case, titled as **Ajit Savant Majagavi** vs. **State of Karnataka**, 1997 AIR (SC) 3255, wherein it was held as under:-

“This Court has thus explicitly and clearly laid down the principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial Court. These principles have been set out in innumerable cases and may be reiterated as under:-

(1) In an appeal against an order of acquittal, the High Court possess all the powers and nothing less than powers, it possesses while hearing an appeal

against an order of conviction.

(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record, or in order words, perverse.

(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial Court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial Court.

(5) If the High Court, in a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favour the accused should be adopted.

(6) The High Court has also to keep in mind that the trial Court had the advantage of looking at the demeanour of witness and observing their conduct in the Court especially in the witness-box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused. “

Learned counsel for the petitioners has further placed reliance

on decision of the Karnataka High Court in case, titled as '**Veerabhadrappa**
vs. **The Manager, State Bank of Mysore**', 2004 AIR (Karnataka) 359,
wherein it was held as under:-

*“The Exs. D-10 and D-11 have not been referred to the handwriting expert. The trial Court on the basis of comparison of the signatures has come to the conclusion that the withdrawal slips at Exs. D-10 and D-11 do not pertain to the handwriting and the specimen signatures of the plaintiff. No doubt, the Court has to ultimately express its judicial opinion on the disputed handwriting and signatures by comparison with the admitted signatures. The subject of handwriting law is intricate and highly scientific in its approach. There are men specially trained and competent to express opinions on the disputed signatures. The Supreme Court in the case of **State (Delhi Administration) v. Pali Ram**, AIR 1979 (SC) 14: 1979 CrL.J.17: 1979 (2) SCC 158, in Para 29 made the following observations:*

"Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing 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."

Petitioners have filed suit for possession by way of specific performance of agreement to sell dated 18.08.2005. During the pendency of the suit, petitioners moved an application that the alleged signatures of the plaintiffs on the backside of the agreement to sell, in question be got compared from Central Forensic Institute. Learned trial Court rightly dismissed the application as the petitioners have already examined an expert in this regard. Defendants have examined their expert to rebut the report tendered by the expert, examined by the petitioners. Trial Court will decide the case on the basis of evidence led by the parties. No ground to get the signatures examined from Central Forensic Institute was made out.

I have gone through the judgments relied upon by learned counsel for the petitioners but the same fail to advance the case of the petitioners as these are based on different facts.

No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

April 08, 2015
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