

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.R.No.6035 of 2015 (O&M)

Date of Decision: May 18th, 2016

Krishan Kumar

...Petitioner

Versus

Parkash Chand

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.S.K.Bishnoi, Advocate,
for the petitioner.

Mr.Deepak Kaushal, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Petitioner-defendant is aggrieved of the impugned order dated 6.8.2015, whereby application seeking indulgence of the Court for sending pronote and receipt to the Central Forensic Science Laboratory, Central Bureau of Investigation, Block No.4, CGO Complex, Lodhi Road, New Delhi to determine the age of the ink of signatures on the pronote and receipt, has been declined.

Mr.S.K.Bishnoi, learned counsel for the petitioner-defendant submits that similar application came to be decided vide order dated 28.8.2014 and Civil Revision No.5770 of 2014 was filed and this Court had remanded the matter back to the trial Court to decide the application uninfluenced with the findings rendered in the order dated 28.8.2014 as the previous application was dismissed on the ground that there was no such

laboratory available in India. He further submits that a specific objection has been taken with regard to the suit being barred by law of limitation. The trial Court yet again dismissed the application on the ground that there is a pleading in the written statement that the respondent-plaintiff is a commission agent and the petitioner used to purchase domestic articles from his shop and on the pretext of settling the account, got signatures on some blank and printed papers. He also submits that determination of age of ink and the documents would be relevant as the suit was filed in the year 2012 and the pronote and receipt are allegedly dated 25.4.2010, but they are blank about what date has been fixed by the respondent-plaintiff.

Mr. Deepak Kaushal, learned counsel for the respondent-plaintiff submits that the pleading qua age of the ink and the documents is conspicuously wanting and, therefore, rightly so, the documents cannot be sent to the laboratory for determining the age. In this regard, he has relied upon the ratio decidendi culled out by this Court in **Sudarshan Kumar Versus Manish Manchanda, 2015(4) RCR (Criminal) 68.**

In rebuttal, Mr. Bishnoi has relied upon the judgment of the Madras High Court reported as **Elumalai Versus Subbaramani, 2012(1) R.C.R. (Civil) 59**, wherein the document has been sent to the laboratory for ascertaining the age while relying upon the judgment rendered by the Hon'ble Supreme Court in **T.Nagappa Versus Y.R.Mudaliar, 2008(3) R.C.R. (Criminal) 926.**

I have heard the learned counsel for the parties and appraised the paper book and of the view that the basis of the ratio decidendi culled out by the Single Bench of this Court in **Sudarshan Kumar's case (supra)** is on the judgment rendered by the Constitutional Bench of Hon'ble

Supreme Court in **Union of India Versus Jyoti Prakash Mitter**, AIR 1971 SC 1093 and the judgment in **T.Nagappa (supra)** has been held to be not applicable. Various other judgments have also been relied upon. The pith and substance of the judgment shows that the Court was of the opinion that the matter was required to be sent to an expert, whereas the Director of the Laboratory would not be an expert.

As per the written statement, Annexure P-2, the petitioner-defendant has taken an objection qua fraud, forgery and the suit being barred by law of limitation. In my view, the trial Court has failed to notice the aforementioned facts and observed that there was no technique available with forensic science expert to determine the period of writing. The judgment of the Constitution Bench is of the year 1971 when no facility was available, whereas judgment of **T.Nagappa** is of the year 2008, which has been rendered by taking into consideration the availability of such facility, therefore, the ratio of **Sudarshan Kumar (supra)**, should not apply.

On the contrary, the ratio decidendi culled out in **Elumalai's case (supra)** is based upon the findings rendered by the Hon'ble Supreme Court in **T.Nagappa**, though in criminal proceedings with regard to the issuance of cheque. The fact remains that in case experts are appointed by respective parties to the lis, they always toe to the lines of clients, who engage them. The only remedy available to the petitioner-defendant is with the independent and unbiased agency, i.e., FSL, noticed above. In case the documents are sent for ascertaining the authenticity, the respondent-plaintiff will have a right to rebut the same, but the defendant cannot be deprived of right to lead evidence rebutting the averments made in the plaint.

For the foregoing reasons, the impugned order is set-aside.

Application, Annexure P-8, is allowed.

Resultantly, revision petition stands allowed.

May 18th, 2016
ramesh

(AMIT RAWAL)
JUDGE