

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

CWP No.678 of 2017(O&M)
Date of decision: January 17, 2017

Association of Forensic Experts (Regd.)

---Petitioner

Versus

State of Punjab and another

---Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. Tribhawan Singla, Advocate for the petitioner.

HARINDER SINGH SIDHU, J.

1. The challenge in the present petition is to the notification dated 26.5.2014 (Annexure P-5) of State of Punjab whereby Forensic Document Examiners Regulatory Rules, 2014 (for short 'Rules') have been notified to regulate service of Forensic Document Examiners working in the field as private practitioners in the State.

2. The petitioner claims to be an Association having more than 20 members who are working in the field as document experts for the last many years. It is claimed that the members of the petitioner society have obtained the basic qualification of M.Sc, or Diploma in Forensic Science from recognized institutions and have sufficient experience in the field.

3. The notification which has been issued in exercise of powers under Article 162 of the Constitution of India has been assailed primarily on the ground that it infringes/ impedes the fundamental rights of the the members of the

petitioner association to carry on their profession as forensic/ document experts without sanction of any law. It is hence claimed that the notification is violative of the rights of the petitioner under Article 19(1)(g) of the Constitution of India. Besides, it has been argued that the Rules are discriminatory in application in as much as they are restricted only to private document experts in the State of Punjab. Government experts are not covered by the Rules. These Rules also do not apply to experts from outside the State, who may be able to come and depose before Courts in the State of Punjab even though they may not be registered under the Rules. The Rules are also assailed for not providing any representation to the representatives of the petitioner Association in the Regulatory Authority.

4. We have heard Ld. Counsel for the petitioner but regret our inability to agree with him.

5. The reason behind the framing of these Rules has been disclosed in the petition itself. This Court in its order dated 29.10.2013 passed in **Civil Revision No.3434 of 2013 Chamkaur Singh Vs. Mithu Singh** taking note of the difficulties faced by Courts in reaching correct conclusions because of conflicting opinions given by experts relied on by the contending parties stressed upon the need to control, regulate, certify, accredit and devise means for registering expert witnesses who appear in Courts.

The relevant observations of the Court are as under:

“Before parting with this order, it would be appropriate to mention that often a court is faced with conflicting opinions given by handwriting experts. The spirit of Sections 45 and 47 of the Act is that the expert whose opinion is sought on a questioned document, should indeed be an expert/skilled person in the field concerned. In Indian

Courts, the procedure is adversarial as opposed to the inquisitorial. The role of a Judge is to preside over the proceedings and rule on the points of law. The expert's overriding duty is to the Court, not to who call him. The opinion of the expert is very important and the court has to determine the lis keeping in view his opinion. Any lapse or mistake due to lack of skill by the expert can lead to grave and manifest injustice to a party. Keeping this in view, this Court is of the opinion that since the opinions of handwriting and fingerprint expert who examine the questioned documents, thumb impressions, signatures, forged documents etc. is very important and has a direct bearing on the credibility of evidence. The need of hour is to control, regulate, certify, accredit and devise means for registering expert witnesses who appear in Courts. The Departments of Justice and Home Affairs of the respective States of Punjab, Haryana and Union Territory, Chandigarh are directed to delve deep in the field and come out with viable mechanism to facilitate the justice dispensation by remedying the prevalent maladies/handicaps in system and the responsible officer of the Departments of Justice and Home Affairs of the respective States of Punjab, Haryana and Union Territory, Chandigarh should file affidavits of compliance within three months as far as proposed action on their part is concerned and prepare list of fingerprint and handwriting experts or forensic questioned documents examiners, who are qualified and skilled to practice this profession on full time basis. The State Governments should check their qualifications and credentials and confirm their credibility in this field. A register of such practitioners should be drawn and rules be framed. A Code of ethics and conduct for their working should also be framed. Besides this, regulatory authority comprising of qualified concerned registered professionals and others related to field be also established to deal with the situations where there are conflicting opinions of experts and the consensus opinion of the Board of experts under the supervision of expert regulatory authority should be binding

on the contesting parties.”

Clearly, the concern and the need for regulation expressed by the Court is unexceptionable.

6. Hon'ble the Supreme Court in ***Ramesh Chandra Agrawal v. Regency Hospital Ltd., (2009) 9 SCC 709*** explained the purpose, need and situations where expert evidence is required as under:

“Expert opinion

16. The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the layperson. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. Thus cases where the science involved, is highly specialised and perhaps even esoteric, the central role of an expert cannot be disputed. The other requirements for the admissibility of expert evidence are:

- (i) that the expert must be within a recognised field of expertise,*
- (ii) that the evidence must be based on reliable principles, and*
- (iii) that the expert must be qualified in that discipline.*

(See Errors, Medicine and the Law, Alan Merry and Alexander McCall Smith, 2001 Edn., Cambridge University Press, p. 178.)

17. Section 45 of the Evidence Act, 1872 speaks of expert evidence. It reads as under:

“45. Opinions 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 certain document was written by A. 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.”

18. *The importance of the provision has been explained in State of H.P. v. Jai Lal. It is held, that, Section 45 of the Evidence Act which makes opinion of experts admissible lays down, that, 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. Therefore, in order to bring the*

evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

19. It is not the province of the expert to act as Judge or Jury. It is stated in Titli v. Alfred Robert Jones that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials.

20. An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. (See Malay Kumar Ganguly v. Dr. Sukumar Mukherjee, SCC p. 249, para 34.)”

7. The Hon'ble Court explained that the law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The foremost requirement for an expert evidence to be admissible is the necessity to hear such expert evidence. The test to determine which is that, the matter is outside the knowledge and experience of the layperson.

It was explained that in order to bring the evidence of a witness as that of an expert

it has to be shown that he has made a special study of the subject or acquired a special experience therein. Meaning thereby that he is skilled and has adequate knowledge of the subject.

8. It is also clear that the range of matters regarding which experts may be called upon to testify in Courts is as wide as the scope of litigation and extends to matters of science or art in addition to the most common issues concerning identity of handwriting or finger impressions or questioned documents. (Section 45 of the Evidence Act).

9. In our considered view, framing of the Rules do not, in any manner infringe upon the fundamental rights of the members of the petitioner-Association to carry on their profession as experts. The Rules are merely regulatory, which prescribe certain qualifications. Standards are to be maintained with regular updation of knowledge in the subjects. This Court in Chamkaur Singh's case (supra) had already expressed its opinion for providing code of ethics and conduct for forensic/ document experts. The authorities have merely framed the Rules in terms of the directions issued by this Court.

10. We do not find any reason to interfere in the present petition. Accordingly, the same is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 17, 2017
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<i>Whether speaking/ reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>