

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : 3rd MAY, 2017

DECIDED ON : 25th AUGUST, 2017

+ **CRL.M.C. 4406/2013 & CRL.M.A.No.15774/2013**

NATASHA SINGH

..... Petitioner

Through : Mr.Dinesh Mathur, Sr.Advocate
with Mr.S.K.Saxena, Mr.Kawal & Mr.Rohit,
Advocates.

VERSUS

CBI (STATE)

..... Respondent

Through : Ms.Rajdipa Behura, SPP with
Ms.Garima Singh Yadav, Advocate.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present petition under Section 482 Cr.P.C. has been preferred by the petitioner to challenge the legality and correctness of an order dated 05.10.2013 of learned Addl. Sessions Judge / Special Judge in CC No. 42/2001 whereby DW-6 (V.C.Mishra) examined in defence by the petitioner was not permitted to give evidence to render his opinion upon the report given by PW-32 (S.L.Mukhi).

2. Briefly stated, the facts of the case are that the petitioner along with others was facing trial before Special Judge, CBI. On 21.01.2013, the prosecution closed its evidence after examining 52

witnesses; it included PW-32 (S.L.Mukhi), retired Principal Scientific Officer, CFSL, New Delhi, a handwriting expert who prove his report (Ex.PW-32/L) and opined that the questioned signature at point Q-7 in Ex.PW-32/L was that of the petitioner. After recording 313 Cr.P.C. statement, the petitioner examined DW-2 (Sudhir Kumar) in her defence and the case was listed for final arguments for 05.03.2013. Subsequently, on 05.03.2013, an application under Section 311 Cr.P.C. filed by the petitioner was dismissed on 16.03.2013. Crl.M.C. 1324/2013 to impugn the said order resulted in its dismissal by this Court. In Crl.A.709/2013 arising out of SLP (Crl.) 3271/2013, the petitioner was permitted to examine defence witnesses by an order dated 08.05.2013. The petitioner thereafter examined DW-4 (Bacha Babu Sharma) and DW-5 (Shanti Swaroop Batra). On 30.08.2013, handwriting expert V.C.Mishra filed expert opinion vide his report dated 12.08.2013 along with its enclosures in the Court and was partly examined that day and on 18.09.2013. Further examination-in-chief was deferred to move an application relating to his examination; it was filed on 24.09.2013. By the impugned order, the said application was dismissed.

3. Perusal of the file reveals that DW-6 (V.C.Mishra) when examined on 30.08.2013 proved his report (Ex.DW-6/A) and was of the view that Q-7 in Ex.PW-32/L was not written by the writer of S-34 to S-64 (Ex.PW-32/H-1 to Ex.PW-32/H-27 and Ex.PW-50/A-1 to Ex.PW-50/A-4). On 18.09.2013, he proved various documents. Further examination was deferred as the petitioner desired to move an application relating to the examination of the witness. DW-6

(V.C.Mishra) again appeared on 21.10.2013 and was partly examined. Further examination was deferred to enable the petitioner to challenge order dated 05.10.2013. On 31.10.2014, it was submitted by learned counsel for the Petitioner that examination-in-chief of DW-6 (V.C.Mishra) would be deemed to have been closed subject to the decision of the Hon'ble High Court on the issue in question. The witness was cross-examined at length that day and on 31.03.2015.

4. Instant writ petition was filed against the order dated 05.10.2013 before this Court which came for hearing on 22.10.2013. It was adjourned to 28.10.2013, 09.12.2013 and 19.02.2014. Crl.M.A. 10945/2014 was filed for return of the Trial Court record. The Trial Court record was sent back on 30.09.2014 to be requisitioned two days before the next date of hearing i.e. 05.11.2014. On 23.11.2015, it was informed that the case was fixed for judgment on 26.11.2015 before the Trial Court. This Court ordered to immediately send back the Trial Court record. However, it was made clear that 'the judgment, if delivered, shall be the subject matter of the present case'. In the meanwhile, the Trial Court vide a judgment dated 07.12.2015 convicted Rita Singh, Natasha Singh (the present petitioner) and Y.V.Luthra for commission of various offences. The petitioner and other convicts have challenged the said final judgment in appeals which are pending before this Court.

5. Learned Senior Counsel for the petitioner urged that since the judgment was subject matter of the present petition, petitioner's conviction does not render the present petition infructuous. The Trial Court did not permit the expert witness (V.C.Mishra) to demonstrate

how the report given by PW-32 (S.L.Mukhi) was incorrect and unconvincing. If permitted, the witness could have come out with his observations and reasons whether or not, he agreed with the observations of PW-32 (S.L.Mukhi) qua the signatures Q-7 of the petitioner in the report (Ex.PW-32/L). The purpose of examination was not to discredit or contradict the evidence of PW-32 (S.L.Mukhi) as evidence to be given was only to the effect that the opinion given by PW-32 (S.L.Mukhi) was unconvincing. There is no law prohibiting reception of such kind of evidence. It was not permissible for the Trial Court to restrict or limit the mode or manner as to how the expert should form or express his opinion or should testify. The expert is free to choose any mode or manner whichever way he could give his opinion and testify. It was for the Court thereafter either to accept or reject his opinion. Section 45 of the Evidence Act does not put any restriction or limitation as to the scope or extent an opinion can be given by an expert. The expert may hold his own opinion and he may disagree with the opinion expressed by any other expert examined to prove the questioned handwriting and may give his reasons for such disagreement. The opinion need not be confined to the data as collected by the expert by his independent examination of the document but he may also express his opinion on the data as collected by the other expert and will be at liberty to demonstrate that data collected by the other expert basing his opinion was not real data or it suffered from some defect of observation, error of premises or mistake of conclusions. Learned Senior Counsel would further urge that since there was challenge regarding the bias and partiality of the

expert witness examined by the prosecution i.e. PW-32 (S.L.Mukhi), the evidence by way of contradiction is permissible under Section 153 of the Evidence Act. The Trial Court ought to have allowed further examination of DW-6 (V.C.Mishra) subject to any objection by the prosecution to be decided at the time of final disposal of the case and ought not to have prematurely disallowed the further examination. It is further urged that the fresh evidence sought to be adduced by the expert was by way of rebuttal as permitted by the Supreme Court in its judgment dated 08.05.2013. It is further urged that the object of examination was not merely to discredit PW-32 (S.L.Mukhi) by injuring his character but instead it was essential to show that his reasons were untrue and improbable. Serious prejudice has been caused to the petitioner by not allowing her expert witness to give evidence on relevant material facts. The impugned order which curtails such examination is not tenable in law. The petitioner was deprived of the opportunity to get the facts purportedly found by PW-32 (S.L.Mukhi) cross-checked from her expert witness. Reliance was placed on '*Bipin Shantilal Panchal vs. State of Gujarat & Anr.*' AIR 2001 SC 1158, '*Natasha Singh vs. CBI (State)*' 2013 (5) SCC 741, '*Lekshmikutty Amma vs. Appu Pillai*' AIR 1955 NUC 1909, '*Shri N.Shri Rama Reddy* (1970 (2) SCC 340), '*Vijayan Alia Vijayakumar vs. State*' (1999 (8) SCC 715), '*State of Karnataka vs. K.Yarappa Reddy*' (1999 (8) SCC 715), '*Ramesh Chandra Agarwal vs. Regency Hospital Ltd. & Ors.*' (AIR 2010 SC 806) & '*S.J.Chaudhary vs. CBI*' (2009 (159) DLT 673).

6. Learned counsel for CBI vehemently urged that there was no illegality or irregularity in the impugned order. DW-6 (V.C.Mishra) was permitted to produce and prove his handwriting report. It was not permissible to comment upon the report proved by the prosecution witness PW-32 (S.L.Mukhi).

7. Undisputedly, CBI examined PW-32 (S.L.Mukhi), retired Principal Scientific Officer, CFSL, New Delhi on 10.05.2010, 19.10.2010, 13.01.2011 & 14.03.2011 to prove his expert opinion. Cross-examination took place on 11.07.2011 and 12.09.2011. Apparently, searching cross-examination was conducted to demolish his opinion as handwriting expert. The petitioner did not seek assistance of any expert to put more questions in his cross-examination that time. She had ample opportunity to engage a private handwriting expert to confront PW-32 (S.L.Mukhi) regarding the opinion expressed by him and to show as to how the opinion given by him was untrue and improbable.

8. The petitioner examined DW-6 (V.C.Mishra), handwriting expert who proved his report (Ex.DW-6/A) regarding the questioned documents. Detailed reasons have been given by the expert witness to arrive at the said conclusion. The examination-in-chief was recorded on 30.08.2013, 18.09.2013 & 21.10.2013. The cross-examination took place on 31.10.2014 and 31.03.2015. Needless to say, DW-6 (V.C.Mishra) was given ample opportunity to prove the report (Ex.DW-6/A) prepared by him with reasons.

9. The Trial Court, rightly, was of the view that DW-6 (V.C.Mishra) could not be permitted to give his opinion about the

correctness of the report submitted by PW-32 (S.L.Mukhi). The objection raised by the petitioner was duly noted and disposed of by a detailed order dated 05.10.2013. This Court finds no illegality or material irregularity in the order under challenge.

10. There were two reports of the handwriting experts; one produced by the prosecution and the other of the private handwriting expert examined by the petitioner to show that the opinion given by PW-32 (S.L.Mukhi) of the questioned documents was faulty. DW-6 (V.C.Mishra) in defence was at liberty to prove his opinion based upon reasons regarding the questioned documents. There was no justification for DW-6 (V.C.Mishra) to make any observation about the opinion rendered by PW-32 (S.L.Mukhi) particularly when his assistance was not taken at the time of his cross-examination. It was for the Trial Court to derive its own conclusion upon considering the opinion of the experts produced by both the parties. It is not the province of the expert to act as Judge. The real function of the expert is to put before the Court all the materials together with reasons which induce him to arrive at the conclusion. It is thereafter for the Court to form its own judgment by its own observation of those materials.

11. In ‘*Malay Kumar Ganguly vs. Dr.Sukumar Mukherjee & Ors.*’, AIR 2010 SC 1162, the Supreme Court held as under :

“43. A Court is not bound by the evidence of the experts which is to a large extent advisory in nature. The Court must derive its own conclusion upon considering the opinion of the experts which may be adduced by both sides, cautiously, and upon

taking into consideration the authorities on the point on which he deposes

44. Medical science is a difficult one. The court for the purpose of arriving at a decision on the basis of the opinions of experts must take into consideration the difference between an 'expert witness' and an 'ordinary witness'. The opinion must be based on a person having special skill or knowledge in medical science. It could be admitted or denied. Whether such an evidence could be admitted or how much weight should be given thereto, lies within the domain of the court. The evidence of an expert should, however, be interpreted like any other evidence."

(Emphasis given)

12. In 'State of Himachal Pradesh vs. Jai Lal & Ors.', 1999 (7) SCC 280, the Supreme Court held as under :

"17. 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.

18. An expert is not a witness of fact. 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 this 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 the 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.”

(Emphasis supplied)

13. Any comment / observation by a defence expert witness (DW-6) upon the correctness and authenticity of the report of another expert (PW-32) examined by the prosecution to prove its case would have been irrelevant and inconsequential as the expert whose opinion was being commented upon could have no opportunity to contradict it. On the same analogy, the prosecution could have asked for examination of PW-32 (S.L.Mukhi) or any other expert to comment upon the opinion / report given by DW-6; it could thus be an unending affair.

14. The opinion of the handwriting expert cannot be substitute for the direct evidence and it is meant only to assist the Court in arriving at an appropriate conclusion. The Court is not bound by the evidence of the expert which is to a large extent advisory in nature.

15. It is further to be noted that the petitioner has already been convicted by the Trial Court and her appeal impugning the judgment is pending. Petitioner's conviction is not based entirely on

the testimony of PW-32 (S.L.Mukhi). The Trial Court has taken into consideration both the reports submitted by the handwriting experts examined by the prosecution and defence.

16. In the light of above discussion, the petition is unmerited and is dismissed. Pending application also stands disposed of.

17. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

AUGUST 25, 2017 / tr

