

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

920 WRIT PETITION NO. 9861 OF 2018

VIDYALATA NAGNATHSINH THAKUR
VERSUS
GOPALSING VITHALSING RAJPUT AND ANOTHER

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Advocate for Petitioner : Shri Shaikh Shoyab
AGP for Respondents:

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 26, 2018
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PER COURT :-

1. The petitioner is aggrieved by the order dated 23.3.2018 passed by the trial Court, by which, application Exhibit 60 filed by the petitioner in MA No.238 of 2015 has been rejected and the request to refer a certificate Exhibit 51, said to be issued and signed by the Sarpanch, to the handwriting expert has been refused.

2. The contention of the petitioner is that Exhibit 51, which was a certificate signed by the Sarpanch was subject matter of recording of evidence. As the Sarpanch has denied her signature on Exhibit 51, the petitioner moved Exhibit 60 praying for referring Exhibit 51 to the handwriting expert for his opinion and for comparing the signature of the Sarpanch on the summons Exhibit 47.

3. Reliance is placed on the judgment of this Court in the matter of Devkumar Fakirchand Hajare Vs. Lobha Fakirchand Hajare, Second

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Appeal No.230 of 2004, decided on 28.9.2017, by the Nagpur Bench. A specific reliance is placed on paragraph Nos.10, 11 and 12 to support the contention that though Section 73 of the Evidence Act does not curtail the powers of the trial Court in examining the signature of a person, it would always be in the interest of justice that a disputed signature be referred to the handwriting expert for his opinion. It is, therefore, submitted that the trial Court has erred in rejecting Exhibit 60.

4. In so far as the submissions of the petitioner to the extent of the scope of Section 73 is concerned, it requires no debate that the power under Section 73 can be exercised by the trial Court, if there are attending circumstances, which would make the task of the Court easy for identifying a signature. If there are no attending circumstances and a disputed signature is to be examined, it is always beneficial to have the signature sent to a handwriting expert for an expert opinion. At the same time, it cannot be ignored that the opinion of an handwriting expert does not necessarily bind the Court and at the most can have persuasive value.

5. The facts emerging from this case are peculiar. The Sarpanch has admitted all her signatures and the contents of the documents in Exhibit

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49, 50, 51 (the document at issue), 52 and 53, when her examination in chief was recorded on 22.8.2017. The counsel for the original applicant sought adjournment for cross-examination and the Sarpanch was cross-examined on 22.9.2017, when she admitted all her signatures, except the signature on Exhibit 51. It is in this backdrop that the trial Court had concluded in the impugned order that the signature of the Sarpanch appearing on Exhibit 51 can be easily compared with all her admitted signatures on Exhibits 49, 50, 52, 53 and also on Exhibit 47, which are the summons bearing the signature of the Sarpanch.

6. No Court would take an undue risk in shouldering the burden of examining a disputed signature under Section 73, unless it finds it convenient to compare the said signature with several admitted signatures emerging in the record of the case. It is in this backdrop that the trial Court had rejected Exhibit 60.

7. I, therefore, do not find that the impugned order could be termed as being perverse or erroneous. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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