

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 18.01.2021****Order delivered on 27.01.2021****Writ Petition (Cr.) No.21 of 2013**

Harish Chandra Shiwale, aged about 59 years, S/o Shri Lotan Prasad. P.No.147598 Technician R.E.D.II-Department Bhilai Steel Plant Steel Authority of India Ltd. R/o Street No.29, Quarter No.2C Sector-8, P.S. Bhilai Nagar, Tah & Distt - Durg (CG)

---Petitioner***Versus***

1. State of Chhattisgarh, through Station House Incharge Police Station - Bhilai Nagar 490006 Tah & Distt-Durg (CG)
2. Shri Rajesh Khare, aged about 57 years, S/o Shri N.P. Khare, Chest Manager, Bank of Baroda, Civil Center, Indira - Place, P.S. Bhilai Nagar - 490006, PS-Bhilai Nagar, Tah & Distt-Durg (CG)

---Respondents

For Petitioner : Mr.V.G.Tamaskar, Advocate
 For Respondent No.1/State: Mr.Jitendra Pali, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. By way of this writ petition, the petitioner calls in question legality and validity of the FIR and consequent Criminal Case No.412/2012 (State of C.G. v. Malkeet Singh and others) in which charges under Sections 420/34, 467/34, 468/34 and 471/34 of the IPC have been framed against the petitioner.
2. Mr.V.G.Tamaskar, learned counsel for the petitioner, would submit that there is no prima-

facie evidence against the petitioner for the aforesaid offences registered against him as he had neither taken any loan from Bank of Baroda nor he had mortgaged his land bearing Khasra No.233/16, Settlement No.1720/02, Book No.233/187 Kohka, total area 1500 sq.ft. and totally false and fabricated complaint was made against the petitioner by respondent No.2 alleging that he has sold the land in question by fabricating the document as originals were kept in custody of Bank of Baroda. He would further submit that supplementary charge-sheet was filed on 16.8.2012 along with opinion of government recognized handwriting expert and as per opinion of the expert, mortgage-deed executed in favour of Bank of Baroda and any other documents such as sale-deeds etc. do not bear the signatures of the petitioner, as such, prima-facie, no offence is made out against the petitioner. Therefore, prosecution and subsequent proceedings against the petitioner deserve to be quashed. He would rely upon the judgment of the Supreme Court in the matters of Saraj Lamp & Industries Ltd. v. State of Haryana and others¹ and Bharat Amratlal Kothari v. Dosukhan Samadh Khan Sindhi and

1 AIR 2012 SC 206

others².

3. On the other hand, Mr.Jitendra Pali, learned Deputy Advocate General for respondent No.1/State, would submit that on valid and sufficient ground, charge-sheet has been filed against the petitioner, in which the trial is going on and as such, no case is made out under Article 226 of the Constitution of India and the writ petition deserves to be dismissed.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove also went through the records with utmost circumspection.
5. It the case of the prosecution that the petitioner has mortgaged the land in question in favour of Bank of Baroda after depositing the original title deed and thereafter he has obtained duplicate Rin Pustika from the office of Tahsildar, Durg by making false statement that his original Rin Pustika is missing and thereafter he sold the said land to one Smt.Madhumita Sarkar without permission and knowledge of the bank despite knowing the fact that he has mortgaged the land in favour of Bank of Baroda being a guarantor and as such,

aforesaid offences have been registered against the petitioner. The petitioner has mainly relied upon the report of handwriting expert submitted by the prosecution along with supplementary charge-sheet and contends that on the basis of such report, no offences as registered are made out against the petitioner.

6. At this stage, it would be appropriate to notice Section 45 of the Indian Evidence Act, 1872 which states 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."

7. From perusal of the aforesaid provision, it is quite vivid 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.
8. The Supreme Court in the matter of **Shashi Kumar**

Banerjee and others v. Subodh Kumar Banerjee since deceased and after him his legal representatives and others³ has held that expert's evidence as to handwriting is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence.

9. In the matter of Fakhruddin v. The State of Madhya Pradesh⁴ the Supreme Court has laid down the principles with regard to evidentiary value of opinion of handwriting expert and held as under:-

"10. Evidence of the identity of handwriting receives treatment in three sections of the Indian Evidence Act. They are Sections 45, 47 and 73. Handwriting may be proved on admission of the writer, by the evidence of some witness in whose presence he wrote. This is direct evidence and if it is available the evidence of any other kind is rendered unnecessary. The Evidence Act also makes relevant the opinion of a handwriting expert (S. 45) or of one who is familiar with the writing of a person who is said to have written a particular writing. Thus besides direct evidence which is of course the best method of proof, the law makes relevant two other modes. A writing may be proved to be in the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of

3 AIR 1964 SC 529

4 AIR 1967 SC 1326

an expert competent to the comparison of handwritings on a scientific basis. A third method (S. 73) is comparison by the Court with a writing made in the presence of the Court or admitted or proved to be the writing of the person.

11. Both under S. 45 and S. 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become an handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case. This comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept that fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness."

10. In the matter of Ishwari Prasad Misra v. Mohammad

Isa⁵ the Supreme Court has held that evidence given by experts of handwriting can never be

conclusive, because it is, after all, opinion evidence.

11. In the matter of Smt. Bhagwan Kaur v. Shri Maharaj Krishnan Sharma and others⁶ the Supreme Court has held that evidence of a handwriting expert, unlike that of a fingerprint expert, is generally of a frail character and its fallibilities have been quite often noticed. It was further held by Their Lordships that the courts should, therefore, be wary to give too much weight to the evidence of handwriting expert.
12. In the matter of Alamgir v. State (NCT, Delhi)⁷ the Supreme Court has held that opinion of handwriting expert under Section 45 of the Evidence Act can be relied upon, but there is no rule of law, nor any rule of prudence which has crystallised into a rule of law that opinion-evidence of a handwriting expert must never be acted upon, unless substantially corroborated.
13. In the matter of Chennadi Jalapathi Reddy v. Baddam Pratapa Reddy (Dead) through legal representatives and another⁸ the Supreme Court relied upon the earlier judgments has held that court must be cautious while evaluating expert

6 (1973) 4 SCC 46

7 (2003) 1 SCC 21

8 (2019) 14 SCC 220

evidence, which is a weak type of evidence and it is not substantive in nature. It was further held that it may not be safe to solely rely upon such evidence, and court may seek independent and reliable corroboration in the facts of a given case, as a general rule of prudence. Generally, mere expert evidence as to a fact is not regarded as conclusive proof of it.

14. Considering the material available on record and further considering the fact that the trial is in advance stage and pleas raised by the petitioner are the matter of evidence and the trial Court is already seized of the matter, at this stage, merely on the basis of above-stated expert evidence, it cannot be concluded that aforesaid offences are not made out against the petitioner warranting quashment of charge-sheet. Opinion of hand-writing expert as filed by the prosecution will be assessed by the trial Court in accordance with law and on that basis, the prosecution cannot be quashed at this stage.
15. Accordingly, the writ petition being devoid of merit is liable to be and is hereby dismissed. However, it is made clear that this Court has not expressed any opinion on merits of the case and report of hand-writing expert will be considered

by the trial Court strictly in accordance of law
on the basis of material available on record. No
cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-