

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

- (1) **CRR-707-2020 (O&M)**
Reserved On: 27.05.2022
Pronounced On: 02.06.2022
- KAILASH NARAIN ...Petitioner
- Versus
- STATE OF PUNJAB AND ANOTHER ...Respondents
- (2) **CRR-944-2020 (O&M)**
- ABHINAV SHARMA @ HONEY SHARMA ...Petitioner
- Versus
- STATE OF PUNJAB AND ANOTHER ...Respondents
- (3) **CRR-612-2022 (O&M)**
- RAVINDR KUMAR ...Petitioner
- Versus
- STATE OF PUNJAB AND ANOTHER ...Respondents
- (4) **CRR-763-2020 (O&M)**
- SANJIV KUMAR ...Petitioner
- Versus
- STATE OF PUNJAB AND ANOTHER ...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present : Mr. Bipan Ghai, Senior Advocate assisted by
Mr. Rishabh Singla, Advocate
for the petitioner in case CRR-707-2020.

Mr. Jasmail Singh Brar, Advocate and
Mr. P.S.Sekhon, Advocate
for the petitioner in case CRR-944-2020.

Mr. Gautam Dutt, Advocate
for the petitioner in case CRR-612-2020.

Mr. Surinder Garg, Advocate
for the petitioner in case CRR-763-2020.

Mr. A.A.Pathak, Addl. A.G., Punjab

Mr. P.K.Ganga, Advocate and
Mr. Ashok Kumar, Advocate
for respondent No. 2/complainant.

SURESHWAR THAKUR, J.

1. All these criminal revision petitions are being decided through a common order, as they arise from a common verdict.
2. The learned Sub Divisional Judicial Magistrate, Budhlada through an order made on 05.10.2015, upon, complaint No.0000377/2013 recorded a verdict of conviction, upon accused. The verdict of conviction became drawn, in respect of charges framed, against them, for offences punishable under Sections 467, 468, 471 read with Section 120-B of the IPC. In consequence to the above made verdict of conviction, upon, the accused therein, he proceeded to, through a sentencing order drawn on 05.10.2015, make the hereinafter extracted sentences, upon the convicts.

Sr. No.	Name of convict	Under Section	Sentence
1.	Abhinav Sharma	120-B IPC	Three years Rigorous imprisonment and to pay fine of Rs.5000/-, in default whereof to undergo further imprisonment for a period of six months.
		471 IPC	Three years Rigorous imprisonment and to pay fine of Rs.5000/-, in default whereof to undergo further imprisonment for a period of six months.
2.	Ravinder Kumar @ Ravi Gupta	120-B IPC	Three years Rigorous imprisonment and to pay fine of Rs.5000/-, in default whereof to undergo further imprisonment for a period of six months.
		467 IPC	Three years Rigorous imprisonment and to pay fine of Rs.5000/-, in default whereof to undergo further imprisonment for a period of six months.
		468 IPC	Three years Rigorous imprisonment and to pay fine of Rs.5000/-, in default whereof to undergo further imprisonment for a period of six months.
3.	Kailash Narain	120-B IPC	Three years Rigorous imprisonment and to pay fine of Rs.5000/-, in default whereof to undergo further imprisonment for a period of six months.
		467 IPC	Three years Rigorous imprisonment and to pay fine of Rs.5000/-, in default whereof to undergo further imprisonment for a period of six months.

		468 IPC	Three years Rigorous imprisonment and to pay fine of Rs.5000/-, in default whereof to undergo further imprisonment for a period of six months.
4.	Sanjiv Kumar	120-B IPC	Three years Rigorous imprisonment and to pay fine of Rs.5000/-, in default whereof to undergo further imprisonment for a period of six months.
		467 IPC	Three years Rigorous imprisonment and to pay fine of Rs.5000/-, in default whereof to undergo further imprisonment for a period of six months.
		468 IPC	Three years Rigorous imprisonment and to pay fine of Rs.5000/-, in default whereof to undergo further imprisonment for a period of six months.

3. The convicts became aggrieved from the afore made verdict of conviction, and, consequent therewith sentence (supra), as became imposed, upon each of them, by the learned trial Magistrate concerned, and, through convicts Ravinder Kumar, and, Sanjiv Kumar, constituting criminal appeal No.57 of 28.10.2015, and, convicts Abhinav Sharma alias Honey Sharma, and, Kailash Narain, constituting criminal appeal No.57A of 29.10.2015, before the learned Appellate Court, they all strived to make an assault thereons. However, their respective appeals (supra), became through a common verdict made thereons on 12.02.2020, became rather dismissed by the learned Appellate Court. Consequently, the convicts became aggrieved from the concurrently made verdicts of conviction and, consequent therewith sentence(s) (supra), imposed upon them, by both the learned Courts below, and, through theirs casting their respective criminal revision petitions, before this Court, they strived to make assaults thereons.

4. The complainant one, Mohinderpal Bali, through a registered deed of conveyance entered at Serial No.188, and, drawn on 07.06.1973 acquired a valid title to the complaint property. However, he alleged in the

Ex.C-2 becomes assigned, rather obviously he never validly alienated the petition property qua one, Dayawanti. Since the signatures made thereons are contended to be forged, and, fabricated, therefore, he alleged that Ex.C-2, is a false or a forged document, and, that thereupon the beneficiary thereof, since deceased Dayawanti, and, now allegedly succeeded by co-accused, Abhinav Sharma, both with *inter-se* connivance attempting to dishonestly establish title thereto. Moreover, he also contended, that through Ex.C-2 wrongful loss became caused to him, and, wrongful gain became accrued to the concerned.

5. However, in so far as the invalidation to Ex.C-2, as, strived to be made by the complainant, is concerned, and, which becomes grooved in his signatures carried thereon becoming forged or fabricated, both the learned Courts below after appreciating the evidence, conspicuously of the handwriting expert concerned, to which Ex.C-2, is assigned, rather came to a concurrent conclusion, that the signatures of the complainant, as carried thereons, are, his authentic signatures. Therefore, obviously both the learned Courts below came to a formidable conclusion, that Ex.C-2, is neither a forged, nor a false document, nor obviously with any dishonest intention, and, on its anvil, the concerned, either causing wrongful gain to themselves or wrongful loss to the complainant one, Mohinderpal Bali. The above made findings acquire conclusive, and, binding effect, as the complainant did not choose to challenge the findings (*supra*). In consequence this Court, deems it fit, and, appropriate to neither delve into the afore factum, nor deems it fit to make any adjudication with respect to the afore contention reared by the complainant.

6. However, an exacerbated dispute has emerged in respect of the validity or otherwise of, the concurrent verdicts made by both the learned

Courts below, in respect of both declaring rather forged the Will Ex.CW-3/A, of Dayawanti, as, drawn on 25.11.2007 Ex.-3/A, became posthumously registered before the Sub Registrar concerned. The beneficiary of the Will is one, Abhinav Sharma, and, co-accused Ravinder Kumar, and, Sanjiv Kumar are the attesting witnesses thereto, and, it is scribed by co-accused Dr. Kailash Narayan Prashar. Therefore, in the face of both the learned Courts below declaring Ex.CW-3/A to be forged, thereupon the above named co-accused became obviously convicted with respect to the charges (supra), as became drawn against them. The concurrent findings of conviction, as, became recorded by both the learned Courts below, qua the above alluded charges, as became drawn against each of them, were made dependent, upon the report of the handwriting expert, who became led into the witness box by the complainant. The report of the handwriting expert is Ex.CW-2/1 to CW-2/12, therein he has echoed that, upon his making comparisons with the admitted/standard writings of Dayawanti, rather with the disputed signatures occurring in Ex.CW3/A, his coming to a conclusion, that the purported signatures thereons of Dayawanti, being forged, or fabricated. Therefore, Ex.CW-3/A becomes a false, and, forged document.

7. The accused also obtained a contrary therewith opinion, from a handwriting expert, opinion whereof is borne in Ex.DH & DI. However, the author of the afore has never stepped into the witness box, to prove Ex.DH & DI, rather only the defence counsel tendered the above. Therefore, Ex.DH & DI never became proven in accordance with law, whereas, they would have become proven, only upon, the author thereof stepping into the witness box, and, in his examination-in-chief his proving the contents borne therein, and, whereafter, upon his successfully withstanding the test of a

contra to the report of the expert of the complainant, does may be countervail the latter.

8. The reason for making the above inference, about the report of the handwriting expert concerned, becoming admissible in evidence or becoming readable, not upon its becoming tendered by the counsel concerned, but upon its author stepping into the witness box, is made dependent, upon, the provisions carried in Section 293 of the Cr.P.C., provisions whereof, stands extracted hereinafter, inasmuch as, only the report of the handwriting expert concerned, working either as an Assistant Director or Director, at the FSL/CFSL concerned, is statutorily assigned, an aura of admissibly, upon its mere tendering by the litigant concerned, and, even without theirs/his stepping into the witness box.

“293.Reports of certain Government scientific experts.- (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:-

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Controller of Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay ;

(e) the Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government

[(g) any other Government scientific expert specified, by notification, by the Central Government for this purpose.]”

9. Though, the above inference qua the admissibility, and, readability of report(s) of handwriting expert(s), working either as an Assistant Director or Director at the FSL/CFSL concerned, merely upon tenderings thereof in Court, without theirs stepping into the witness box, becomes drawn from by the mandate carried in Sub-Section 1 of Section 293 of Cr.P.C., but Sub-Section 2 thereof, yet empowers the Court concerned to, if it deems fit to examine the expert concerned. If so, though even without the personal tenderings, in Court, rather the reports authored by the handwriting experts working either as an Assistant Director or Director at FSL/CFSL concerned, yet the apposite report(s) are made readable, and, admissible in evidence. However, the words “may be” as occur in sub-Section 1 of Section 293 of Cr.P.C., attach obviously to the report(s) (supra), rather only a presumption of truth, besides obviously the words “may be”, as employed therein, rather do make the reports concerned, to be used, as evidence in any inquiry, trial or other proceedings drawn before the trial Court, yet the above statutory phrase does hold a significance, inasmuch as, that the above presumption being rebuttable. The further reason for the afore, becomes comprised in the factum, that Sub-Section 2 of Section 293 of the Cr.P.C., yet empowers the learned trial Judge concerned, if deemed fit to summon, and, examine the handwriting expert concerned, working either as an Assistant Director or Director at FSL/CFSL concerned. However, the above summoning, and, thereafters the examination of the above, though, can be made *suo-motu*, but it appears, that since a rebuttable presumption of truth, is attached to the report of handwriting expert concerned, working either as an Assistant Director or Director at FSL/CFSL concerned, that may be only, on the motion of the obviously aggrieved therefrom, rather the defence counsel concerned, and, who intends, to impeach his report, that

normally the statutory empowerment carried in Sub-Section 2 of Section 293 of the Cr.P.C., rather may become re-coursed by the learned trial Judge concerned.

10. Needless to say that the expert concerned, who drew Ex.CW-2/1 to CW-2/12, stepped into the witness box, as CW-2, and, faced a rigorous cross-examination, and, also did successfully remained unscathed, in the above ordeal. If so, and, with the report of the handwriting expert, as, carried in Ex.DH & DI, becoming merely tendered into evidence, by the learned counsel concerned, and, the author thereof never stepping into the witness box, whereas, he was neither an Assistant Director nor a Director working, as such, at the FSL/CFSL concerned. Consequently, when the mandate of Sub-Section 2 of Section 293 of the Cr.P.C., is applicable only to the above, thereupon obviously the mandate (supra), is inapplicable to a private handwriting expert, nor merely upon the tendering, of the apposite report, it became either admissible or readable in evidence, nor any valid dependence could be made thereons, by the accused.

11. Though, the accused during the pendency of criminal appeal(s) respectively bearing No.57, and, No. 57A, before the learned trial Judge concerned, moved an application under Section 391 of the Cr.P.C., claiming therein relief, that the author of Ex.DH & DI, be permitted to be examined on the ground, that he is even more qualified, and, experienced than one, Anil Kumar Gupta, the maker of Ex.CW-3/A. However, learned Appellate Court, within the common verdict of dismissal, as, made upon criminal appeals bearing No.57, and, 57A, also declined the above relief to the accused. The above application was aptly dismissed, as despite an opportunity before the learned trial Judge to ensure the stepping into the

opportunity remaining unavailed.

12. In the face of the above abandonments of an opportunity, by the accused, this Court concludes, that obviously the accused are estopped to re-avail it, subsequently through an application, cast under Section 391 of the Cr.P.C., before the learned Appellate Court. Furthermore, even if assuming that the above steppings into the witness box of the author of Ex.DH & DI was may be just, and, essential, for not prejudicing the accused's defence, but yet this Court, may have become inclined to interfere with the declining of relief to the accused by the learned Appellate Court, but only if also, the author of Ex.CW-2/1 to CW-2/12 rather also had remained unexamined, as a complainant's witness. The reason being that if both the experts', as became depended respectively by the complainant, and, the accused, never stepped into the witness box, thereupon the report of each of them became inadmissible, and, unreadable, and, in consequence the above may have been cured, through an application filed, by each under Section 391 of the Cr.P.C. Significantly given, the apposite contra report of the handwriting expert concerned, being both just, and, essential for deciding the controversy appertaining to the preparation of a purportedly forged Will Ex.CW-3/A. However, yet for proving the report, of the handwriting expert concerned, to which Ex.CW-2/1 to CW-2/12, is assigned, the complainant also ensured the stepping into the witness box, of the author of the above, who rather in his examination-in-chief, did, prove the same, and, thereafter, upon his exacting cross-examination, by the learned defence counsel, rather did not yield to the defence. Therefore, in the wake of the above, to yet permit the author of the Ex.DH & DI, to step into the witness box, to enable the accused to prove the report contra to Ex.CW-2/1 to CW-2/12, would only result, in untenably scuttling the effect of Ex. CW-2/1 to CW-2/12,

especially when its author successfully withstood the test of a rigorous cross-examination, as, made upon him. Moreover, it would concomitantly work against the principles of abandonment, and, waivers arising for reasons (supra), rather qua accused, and, his also concomitantly becoming estopped to undo the missteps or to rectify the earlier made mistakes or to save the defect, if any, of theirs candidly omitting to ensure the stepping into the witness box, rather for reasons best known to the defence, the handwriting expert concerned, hence for his proving his report.

13. Be that as it may, even the best evidence, for scuttling the effects in any of Ex.CW-2/1 to CW-2/12, became comprised, in the may be the contra therewith report, becoming through the leave of the learned trial Judge concerned, hence becoming elicited from the handwriting expert concerned, working either as Assistant Director or Director at FSL/CFSL concerned. However, even the above best evidence, remained never even attempted to make its emergences, by the defence, as they omitted to make an application under Section 311 of the Cr.P.C., for the afore purpose, before the learned trial Judge concerned. The above failure also galvanizes an inference, that since promptest to the tendering into evidence of Ex. CW-2/1 to CW-2/12, by its author, rather the above recouring never became adopted by, the accused. Therefore, the accused are estopped, to subsequently only before the learned Appellate Court, ask for the stepping into the witness box of the author of Ex.DH & DI, who otherwise also was neither an Assistant Director or Director working at FSL/CFSL concerned, and, obviously his report for purportedly countervailing the effect to Ex.CW-2/1, to CW-2/12, did not comprise the best evidence, for rebutting the efficacy of CW-2, who is the author of Ex.CW-2/1 to CW-2/12, and, who not only stepped into the

successfully withstood the rigours of cross-examination.

14. Furthermore, the only ground on which CW-2 could have been permitted to be thrown a challenge, became comprised in the accused concerned, proving that the admitted signatures of Dayawanti, as made, on Ex.CW-3/A, were not her admitted signatures. The admitted signatures of Dayawanti were carried in her bank records, and, they are presumed to be her authentic signatures, unless evidence became adduced, that she did not open any account with the bank concerned. The above proof could have emanated only when drawls from her bank account provenly happened through forged cheques or forged withdrawal forms. However, the above manner of disproving the validity of the admitted signatures, as, made by Dayawanti, on the documents concerned, as, maintained with the bank concerned, never became adopted rather through the above mode. Therefore, hers signatures on the documents maintained with the bank concerned, are to be construed to be her valid signatures, and, also their comparisons, as, made by the expert along with her disputed signatures, cannot suffer from any vice of any mis-comparisons.

15. Moreover, since the agreement to sell to which Ex.CW-3/B is assigned though, has been concluded to be not a false document. However, since Dayawanti is the beneficiary thereof, and, may have become empowered to claim absolute title to the property mentioned therein, and, also co-accused Abhinav Sharma may claim to be her valid successor. However, he could on anvil of Ex.CW-3/B, a document provenly authored by the complainant, irrespective of forgery being made at the instance of the concerned, qua Will Ex.CW-3/A, rather claim valid succession to the estate of Dayawanti. However, he could do so only when his predecessor in

the complainant qua her, had provenly established, that after liquidation by her to him, of the entire sale consideration, she had assumed valid possession of the petition property. The above could have been done, only in a suit instituted against her by the complainant, and, her's in a written statement rather propagating that she is hence entitled to the benefit of Section 53-A of the Transfer of Property Act. However, the above fact, is not forthcoming, from any finding to the above fact becoming recorded by the learned Civil Judge concerned, upon, any apposite civil suit. Contrarily, co-accused Abhinav Sharma, as, revealed from the records instituted in respect of Ex.CW-3/B, a suit for specific performance rather against the complainant. However, even the fate of the civil suit concerned, has not been brought on record by the accused concerned, and, for its being became withheld from the Court, an adverse inference against the accused is to be drawn. The further effect thereof is that, the plea of part performance, as enshrined in Section 53-A of Transfer of Property Act, which was rather available to be re-coursed, at the instance of the accused concerned, in a suit instituted against him, by the complainant, which, however never became instituted, and, obviously never hence became recoursed. Therefore, Ex.CW-3/B cannot provide any anchor for the accused concerned, to make any dependences thereons.

16. In consequence, irrespective of Ex.CW-3/B being declared to be not a false document, yet the accused concerned, irrespective of Will Ex.CW-3/A, becoming declared to be a forged, and, false document, rather cannot claim that he yet was entitled to succeed to the petition property.

17. In view of the above, this Court does not deems it fit, and, appropriate to interfere with the impugned verdicts of conviction, and,

learned Courts below. However, since from the commencement of trial in the year 2008, upto now, much time has elapsed, besides with the concomitant thereto agony, and, trauma besetting the accused, therefore, this Court in view of the custody certificate of all the accused, wherein Abhinav Sharma @ Honey is echoed to suffer judicial incarceration for 14 months, and, Kailash Narain, Ravinder Kumar, and, Sanjiv Kumar are respectively echoed to suffer judicial incarceration for 1 year each, to thereupons, in substitution of the sentence of imprisonment of 3 years, imposed upon above, in respect of charges qua offences punishable under Sections 467, 468, 471 read with Section 120-B of the IPC, this Court deems it fit to sentence each of the accused to the term already spent by each in prison. However, the sentences of fine, as imposed, upon the convicts, by the learned trial Court concerned, are not interfered with. Case property, if any, be destroyed after expiry of period of limitation. Records be sent down forthwith. The accused-appellants herein, if in custody, and, if not required in any other case, be forthwith set at liberty, but subject to theirs' depositing the fine amount, if not already deposited. Release orders be prepared accordingly.

18. Disposed of accordingly.

June ,02 2022
'Ithlesh'

(SURESHWAR THAKUR)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes / No</i>
<i>Whether Reportable</i>	<i>Yes / No</i>