

2024:PHHC:163110



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

**CRM-M-54251-2024
DECIDED ON: 29.10.2024**

GURMEET KAUR
.....PETITIONER

VERSUS

JASWINDER KAUR & ANOTHER
.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S. Jammu, Advocate
 for the petitioner.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Section 528 BNSS, 2023, has been invoked seeking quashing/modifying that part of the impugned order dated 04.10.2024 (Annexure P-5) passed by Judicial Magistrate Ist Class, Sirsa vide which a direction has been issued to the petitioner-accused to give her thumb impression for comparison.
2. The brief facts of the present case is that a complaint under Sections 420,409, 467, 468, 471 and 120-B IPC has been filed by Jaswinder Kaur alleging that her relatives, Gurmeet Kaur (petitioner) and Jora Singh, conspired to grab the ancestral land of Balbir Kaur, the widow of the uncle of the complainant. Balbir Kaur has been mentally ill for 35 years and was kept isolated from other relatives. Gurmeet Kaur (Petitioner) and Jora Singh allegedly forged a General Power of Attorney (GPA) in 2002, impersonating Balbir Kaur, and used it to sell the land to others, usurping Rs. 60 lakh. They also filed a civil suit to grab the remaining

property, using a forged written statement in the name of Balbir Kaur. The complainant claims that Gurmeet Kaur (petitioner) and Jora Singh, along with others, used fabricated documents to take over entire property of Balbir Kaur.

3. Learned counsel for the petitioner has argued that the trial court has passed the impugned order without properly exercising its judicial discretion and failed to acknowledge the petitioner's fundamental right under Article 20(3) of the Constitution of India. This article protects individuals from being compelled to testify against themselves. Furthermore, the counsel contended that, in the absence of a specific provision in the Criminal Procedure Code (Cr.P.C.), the trial court lacks the authority to mandate that the petitioner-accused provide her thumb impression for comparison. Consequently, the order is claimed to contravene Cr.P.C. provisions. The petitioner-accused asserts that since the complainant did not substantiate her claims, there is no justification for compelling her to submit her thumb impression for comparison. Given that the petitioner-accused is unwilling to provide her thumb impression, she cannot be forced to do so without her consent.

4. Heard.

5. Before proceeding further, it is essential to understand the legal framework surrounding the rights of the accused under Article 20(3) of the Constitution of India. Article 20(3) provides that "no person accused of an offence shall be compelled to be a witness against himself." This constitutional protection is designed to prevent self-incrimination and ensures that an accused can remain silent regarding allegations against them. It is based on the principle that no individual should be forced to provide evidence that could incriminate themselves. However, this protection does not extend to requiring an accused to provide physical evidence such as specimen signatures or thumb impressions. The courts have clarified that while an accused cannot be compelled to make statements that could be self-incriminating, they can be directed

to provide physical samples for comparison purposes without violating their rights under Article 20(3). The rationale is that providing such samples does not constitute testimonial evidence but rather serves as physical evidence for forensic analysis.

6. In the case in hand, the complainant's request for a handwriting expert's examination and for Gurmeet Kaur to provide specimen signatures is permissible under the law. The court can direct an accused to provide such specimens, as this does not infringe upon their right against self-incrimination. The argument presented by the counsel of the petitioner, which suggests that this request violates Article 20(3), is thus misconceived. The Indian Evidence Act supports this position, particularly Section 73, which allows courts to direct individuals present in court to write words or figures for comparison with disputed writings. This legal provision underscores the court's authority to obtain specimen signatures from an accused when necessary for resolving disputes regarding authenticity.

7. The complainant's application for expert examination and specimen signatures is justified and aligns with established legal principles. The protections afforded by Article 20(3) do not preclude such actions, as they do not compel the accused to testify against themselves but rather facilitate a fair examination of evidence relevant to the case.

8. In view of the discussions made hereinabove, this Court is of the view that the impugned order dated 04.10.2024 (Annexure P-5) is a well reasoned and a speaking order which needs no interference of this court. Accordingly, the same is upheld and the present petition stands dismissed.

29.10.2024
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable Yes/No