

CC no. 22869/2016
PS Patel Nagar
Jagdeep Ohri & Ors. vs. Sunil Ohri & Ors.

The matter has been taken up for pronouncement of order by way of video conferencing (CISCO Webex Meetings) on account of lockdown due to COVID-19. The counsel was already intimated by Ahlmad/ Asst. Ahlmad regarding the date and time of pronouncement of order.

01.06.2020

Present: Sh. Sanjay Sharma (enrol. no. D/644/98R), Learned Counsel for the complainant through video conferencing.

The matter is fixed for order on summoning of the accused persons.

The complainants have filed the present complaint under section 200 Cr.P.C alleging that the accused persons in conspiracy with each other forged signatures of Ms. Shobha Ohri (cousin of the complainants as well as of the accused no. 1 and 3) on the Will dated 23.03.2015 registered on 24.03.2015 to gain wrongfully and to cause wrongful loss to the complainants and other co-sharers.

The complainants examined Ct Rishipal as CW-1, Sh. Surya Prakash, LDC from the Office of Sub Registrar, Kashmere Gate as CW-2, Sh. Puran Chand, Consultant at Land and Development Office as CW-3. Complainant No. 2 has been examined as CW4, Complainant No. 3 has been examined as CW5, Complainant No. 4 has been examined as CW6 and Complainant No. 1 has been examined as CW7. The complainants have also examined handwriting expert Sh. Rakesh Meena as CW-8. Pre-summoning evidence was closed vide order dated 10.08.2017.

In the pre summoning evidence, the complainant no.1/CW-7 **Sh. Jagdeep Ohri** has deposed that accused Sunil Ohri and Vinod Ohri are his cousin brothers (Taya's Son) and Smt. Rajni Ohri is his sister in law. Accused Pankaj and Harishant @ Harish are the associates of accused no. 1 to 3. His grandfather Late Sh. Milkhi Ram Ohri died and left behind following persons as his legal heirs:- Late Smt. Vidyawati Ohri (wife of his grandfather); Late Sh. Kishan Lal Ohri (Son); Late Sh. Yograj Ohri (Son); Late Sh. Baldev Kumar Ohri (Son); Late Sh. Kulbhushan Ohri (Son); Late Sh. Bharat Bhushan Ohri and Sh. Subhash Chand Ohri (Son). His uncle (Tayaji) Sh. Yograj Ohri @ Yogi had expired during the lifetime of his parents and had left behind Smt. Sushila Ohri (wife) and one daughter namely Ms. Shobha Ohri @ Shubh as his legal heirs. His uncle during his lifetime purchased a property bearing no. K-124, Ist Floor, West Patel Nagar, New Delhi in the name of his wife. Title documents of the property is Ex. CW-3/2 to Ex. CW-3/6. After death of his Tayiji, the property in question was mutated in the name of his cousin namely Ms. Shobha Ohri @ Shubh. His sister was of unsound mind and she used to take treatment from Mental Hospital. When she was young, her rishta was broken and due to this, she was upset and under treatment for mental cure. His cousin sister Ms. Shobha Ohri @ Shubh had expired on 23.12.2015. Certified copy of death certificate is Ex. CW-4/1.

CW-7 has further deposed that accused no. 1 to 3, in connivance of accused no. 4 and 5, had prepared a forged and fabricated Will Ex. CW-2/2. The purported alleged signatures of Ms. Shobha Ohri @ Shubh are not her signatures. The true and genuine

signatures of Ms. Shobha Ohri are on document Ex. CW-3/2, Ex. CW-3/3 and Ex. CW-3/4. The photographs of Ms. Shobha Ohri @ Shubh on the Will belonged to her early age and it can be verified from photographs shown on the back of the Will. In that photo, his cousin Ms. Shobha Ohri is appearing in deteriorated condition, physically and mentally not well and no medical certificate is enclosed with the alleged Will. The accused persons, in connivance of each other, prepared the forged and fabricated Will as they want to grab aforesaid property. The certificate copy of the Election I Card, Adhar Card, Leased Deed and other documents are Ex. CW-4/2 to Ex. CW-4/5 respectively.

CW-7 has further deposed that on the occasion of Kriya Ceremony of his cousin Ms. Shobha Ohri @ Shubh when he alongwith his other brothers and sisters had asked about the status and share in the property in question, accused no. 1 to 3 refused to give any share and threatened to kill. His complaint is Ex. CW-4/6 and affidavit is Ex. CW-7/A.

CW-4 Ms. Sunita Saini is the complainant no.2. **CW-5 Ms. Anita Arora** is the complainant no.3. **CW-6 Ms. Geeta Patni** is the complainant no.4. They have deposed on the same lines as that of CW-7 Jagdeep Ohri.

CW-1 Ct. Rishipal has proved the complaint to SHO as Ex. CW-1/1. **CW-2 Sh. Surya Prakash** (LDC from the office of Sub-Registrar) has proved certified copy of Will as Ex. CW-2/1 and Will as Ex. CW-2/2. **CW-3 Sh. Pooran Chand** (Consultant, L & DO) has proved letter written by Ms. Shobha to L&D as Ex. CW-3/2, copy

of affidavit dated 27.05.1996 and affidavit dated 09.05.1996 executed by Ms. Shobha as Ex.CW-3/3 and Ex.CW-3/4. He has also proved copy of letter dated 24.09.1996 in favour of Ms. Shobha as Ex. CW-3/6.

CW-8 Sh. Rakesh Meena is handwriting expert from Premier Forensic Science Institute. He has deposed that he had taken photographs of the disputed signatures of Ms. Shobha from the office of Sub Registrar, Kashmere Gate and also from the certified copy of the Family Deed of Will Ex. CW-8/6 collectively (6 pages) as well as the photographs of admitted signatures of Ms. Shobha from the department of the L & D, Nirman Bhawan. His report is Ex. CW-8/3 collectively (6 pages). As per his report, questioned English signature were not written by the person who wrote admitted English signature.

The complainants have filed the complaint alleging offences punishable U/s. 420/465/467/468/471/506/120B/34 IPC.

Arguments were heard on summoning.

Written arguments were filed on behalf of the complainants. In the written arguments, it is stated that the summoning order may be passed against the accused persons as the accused persons have committed various offences. Accused No. 1 Sunil Ohri was the mastermind. Accused no.1 Sunil Ohri and accused no. 3 Vinod Ohri are the cousin brothers of the complainant. Accused No. 2 Rajni Ohri is wife of accused No. 1.

It is further stated in the written arguments that the accused persons in a pre-planned manner in order to gain wrongfully and to cause wrongful loss to the complainants and other co-sharers,

and in order to defeat their legal claim over the property No. K-124, First Floor, West Patel Nagar, prepared a fabricated Will by forging the signatures of Ms. Shobha Ohri and by affixing an old photograph of Ms. Shobha Ohri. Co-accused Pankaj and Harish had signed as attesting witnesses on the false and fabricated Will. The accused persons have made the signatures of Ms. Shobha Ohri and used her signatures as genuine with a single purpose of cheating and to gain wrongfully and to cause wrongful loss to the complainants. When the complainants received certified copy of the documents on 27th July 2016 from the Court and compared the signatures, the complainants were stunned as the alleged Will was not signed by Ms. Shobha rather it was either signed by Sunil Ohri or Rajni Ohri or Vinod or Pankaj or Harish. The said property is still in the possession of Sunil Ohri and Rajni Ohri. On 16th August 2016, when the complainants asked accused No. 1 as to how he made the forged and fabricated Will as the complainants alongwith other legal heirs were co-owners in the property, the accused No. 1 started passing threats upon the complainants.

It is further argued that the complainants, at the pre summoning stage, have examined Ct Rishipal who proved the complaints lodged at PS Patel Nagar. CW2 Surya Prakash, LDC from the Office of Sub Registrar, Kashmere Gate had stated about execution of alleged forged and fabricated Will on 24th March 2015. CW3 Puran Chand, Consultant at Land and Development Office brought the record of the Affidavit dated 9th May 1986 executed by Ms. Shobha. Complainant No. 2 has been examined as CW4, Complainant No. 3 has been examined as CW5, Complainant No. 4

has been examined as CW6 and Complainant No. 1 has been examined as CW7. They have reiterated the allegations made in their complaint on oath. The complainants also moved an application for opinion of handwriting expert and the Court granted permission for obtaining images of the signatures of Ms. Shobha Ohri from the Will in the Office of Sub Registrar and from the documents in the Office of Land & Development for comparison of the signatures. The contents of the expert report prove that the Will is forged and fabricated.

Learned counsel for the complainants has relied upon judgment passed by Hon'ble Supreme Court in the matter of **Kamla Devi Aggarwal vs. State of West Bengal 2002(1) SCC 555**.

This Court has considered the submissions of Learned counsel for the complainants and perused the record. This Court has also carefully gone through the judgment relied upon by the learned Counsel.

The complainants have alleged offence of cheating punishable under section 420 IPC. Section 420 IPC reads as, *“Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”*

In the case, there is nothing to show that any of the

complainant was cheated by any of the accused by inducement or false promise/assurance or that any of the complainant delivered any property to the accused / altered or destroyed any property / valuable security under such inducement. ***The allegations are therefore not sufficient to summon the accused persons for offence u/s. 420 IPC.***

The complainants have also alleged offence of criminal intimidation punishable under section 506 IPC. Section 506 IPC provides punishment for criminal intimidation. Section 503 IPC defines 'criminal intimidation' as, "*Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.*"

The complainants have made allegations of extension of threat by the accused persons on Kriya Ceremony of Shobha Ohri. There is nothing to show that any of the complainants were alarmed because of alleged threat extended by accused No. 1, 2 and 3 on the kriya ceremony of Ms. Shobha Ohri. The ingredients of criminal intimidation are not satisfied. ***Hence, the accused persons are not summoned for offence punishable under section 506 IPC.***

The complainants have also alleged offence of forgery and use of forged document as genuine. Section 465 IPC prescribes punishment for offence of forgery. Section 463 IPC defines 'forgery' as, "*Whoever makes any false documents or false electronic record*

or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.” Section 467 IPC prescribes punishment for forgery of valuable security or Will etc. Section 468 IPC prescribes punishment for offence of forgery for purpose of cheating. Section 471 IPC prescribes punishment for use as genuine a forged document or electronic record.

The complainant has alleged that the signatures of Ms. Shobha were forged on the registered Will dated 24.03.2015. It is not the case of the complainants that any forgery was committed in their presence. They have also not produced any witness who had seen any of the accused forging Will in question. Their allegation is mainly based on two alleged circumstantial evidences. One allegation is that Ms. Shobha was not mentally and physically sound when the alleged Will is shown to be executed by her. Second allegation is that her signatures on the alleged Will do not match with her admitted signatures, as mentioned by the expert in the report.

The photographs placed on the first page of the Will Ex. CW2/2 shows that some old photograph of Ms. Shobha was affixed. However, the recent photograph which was taken on the date of Registration of the Will is on the backside. The fact that there is photograph of the executor on the backside of the Will, shows that executor Ms. Shobha was present in the office of the Sub Registrar on the date of execution of the Will and the presumption applies that the Will was executed by Ms. Shobha Ohri. There is no evidence

produced by the complainants that Ms. Shobha was not in the office of Sub-registrar on that day.

The complainants have alleged that the accused had taken benefit of mental condition of Ms. Shobha Ohri and she was suffering from some mental problem. However, no medical document has been placed by the complainants to show that Ms. Shobha Ohri was suffering from any mental illness. Further, in the entire evidence, none of the complainant has stated about the type of mental illness with which Ms. Shobha Ohri was suffering. They have also not stated the name of the hospital where she was taking treatment for her mental illness. No medical document has been placed on record to show that Ms. Shobha Ohri was suffering from any mental illness. The photographs on which the complainants have relied is not even prima facie sufficient to show that Ms. Shobha was suffering from any mental illness or that she was of unsound mind on the date of execution of registered Will.

The complainants have relied upon the expert opinion to show that the signatures of Ms. Shobha Ohri were forged on the Will. CW8 Rakesh Meena has stated that signatures on the Family Deed of Will were compared with the signature of Ms. Shobha Ohri on her admitted documents i.e. letter sent to Deptt of Land & Development which is Ex. CW3/2 and the Affidavits dated 27.05.1996 and 09.05.1996 which are Ex. CW3/3 and Ex.CW3/4. The letter was written and affidavits were executed by Ms. Shobha Ohri in the year 1996. The registered Family Deed of Will was executed in the year 2015. There is a gap of almost 20 years in the execution of the documents. It is a matter of common knowledge that with the passage

of time, the signature of a person tend to change. It is not possible to sign in the same manner (with same strokes) even after gap of 20 years. It is settled that an expert or Court can compare the disputed signature with that of the admitted signature but such disputed signature can be compared only with admitted signatures which were contemporaneous. There may be difference in the signature of a person by lapse of time. I rely upon the judgment of Hon'ble Madras High Court in the matter of **Central Bank Of India vs Antony Hardware Mart** on 14 December, 2005 A.S.No.834 of 1989 and A.S.No.569 of 1989. In any case, it is on record that on the date of execution of Will, Ms. Shobha was present in the office of Sub-registrar.

This Court is of the view that much reliance can not be placed on the expert opinion relied by the complainants. It is well-known fact that private handwriting experts are produced in the Court only if they agree to support the case set up by the party which engages them. There is a tendency on the part of an expert witness to support the view of the person who called him. (Reliance is placed on the judgment of Hon'ble Delhi High Court passed in the matter of **Alok Gupta vs M/S Rubfila International Ltd.** dated 22 December, 2010 arising out of CS(OS) No. 2497/1999.)

It is also settled that an expert is not a witness of fact and his evidence is of an advisory character. It is also settled that the evidence of hand writing expert is merely suggestive. Expert's evidence as to handwriting is opinion evidence and it can rarely take the place of substantive evidence. In **Magan Bihari Lal Vs. State of Punjab (AIR 1977 SC 1091)**, while dealing with evidence of a

handwriting expert, Hon'ble Apex Court opined:-

“It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in Ram Chandra v. State(1) that it is unsafe to treat expert hand- writing opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in Ishwari Prasad v. Md. Isa(2) that expert evidence of hand- writing can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in Shashi Kumar v. Subosh Kumar (3) where it was pointed out by this Court that expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear_ direct evidence or by Circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in Fakhruddin v. State(4) and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence. the court must always try to see whether it is corroborated by other evidence, direct or circumstantial. It is interesting to note that the same view is also echoed in the judgments of English and American courts. Vide Gurney v. Langlands(5) and Matter of Alfred (1) AIR 1957 SC 381. (2) AIR 1963 SC 1728 (3) AIR 1964 SC 529 (4) AIR1967 SC 1326 (5) 1822, 5B & Qld 330 Fogter's Will(1). The Supreme Court of Michigan pointed out in the last mentioned case: Every one knows how very unsafe it is to rely upon any one's opinion concerning the nice- ties of penmanship--Opinions are

necessarily evil" and may be valuable, but at best this kind of evidence, vii". We need not subscribe to the extreme view expressed by the Supreme Court of Michigan, but there can be no doubt that this type of evidence being opinion evidence, is by its very nature, weak and infirm and cannot of itself form and the basis for a conviction." (emphasis supplied)

In the present case, the Will is a registered Will executed by Ms. Shobha Ohri in favour of accused no.3 Rajni Ohri. There is a presumption in favour of registered document that it was duly executed and the burden lies upon the opposite party to show that it was not properly executed. Hon'ble Supreme Court in the matter of **Abdul Rahim & Ors. vs. Abdul Zabar & Ors.** dated 06.03.2009 in CIVIL APPEAL NO. 1573 OF 2009, has held, *"14. Indisputably, the deed of gift is a registered one. It contains a clear and unambiguous declaration of total divestment of property. A registered document carries with it a presumption that it was validly executed. It is for the party questioning the genuineness of the transaction to show that in law the transaction was not valid."*

The judgment relied upon by Learned Counsel for the complainant is distinguishable on the facts of the case, as in that case the alleged forged dissolution deed was not a registered one and the alleged executor of the document had herself challenged her signatures on the same in the complaint. However, in this case, the Will is a registered Will and the executor of the Will has already died.

In view of the discussion herein-above, this Court is of the view that the complainants have failed to show that the signatures of Ms. Shobha Ohri has been forged on the registered Will. **Hence,**

the accused persons are also not summoned for offences punishable under section 465/467/468/471/120-B IPC.

In view of the above, this Court holds that the material on record is not sufficient to summon the accused persons for any of the alleged offences. **The complaint is therefore dismissed and disposed off.**

File be consigned to record room after necessary compliance.

**NEHA
ACMM(W):DELHI:01.06.2020**