



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No.584 of 2025

Reserved on: 1.7.2025

Date of Decision: 14th July, 2025.

Mantesh Kumar	...	Petitioner
Versus		
Shobha Ram	...	Respondent

Coram
Hon’ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?¹ Yes.

For the petitioners	:	Mr. Sanjay Kumar Sharma,
		Advocate.
For the respondent	:	Nemo

Rakesh Kainthla, Judge

The present petition has been filed against the order dated 16.06.2025 passed by learned Judicial Magistrate First Class, Palampur, District Kangra, H.P., vide which the application filed under Sections 45 and 73 of the Indian Evidence Act was dismissed.

2. Briefly stated, the facts giving rise to the present petition are that the respondent/complainant filed a complaint against the petitioner/accused for the commission of an offence

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

punishable under Section 138 of the Negotiable Instruments Act (for short 'NI Act'). The respondent/complainant availed of 25 opportunities and closed the evidence on 23.7.2024. The statement of the petitioner/accused was recorded under section 313 of the CrPC. The petitioner/accused examined a private Forensic Expert as DW2, who tendered a Forensic Report (Ex-DW2/A) and opined that the signatures and handwriting on the cheque are not those of the petitioner/accused. He admitted in his cross-examination that he did not have the original record, and he had compared the photocopies. The learned Trial Court discarded the evidence of the Expert and prejudiced the defence of the petitioner/accused. The petitioner/accused examined the Customer Relationship Officer of Federal Bank, Ludhiana, who brought the original record containing the signatures of the petitioner/accused. The learned Trial Court gave its opinion that the complaint would be allowed, hence, the petitioner/accused filed an application under Section 45 of the Indian Evidence Act for the comparison of his signatures through a Government Forensic Expert. The application was opposed by the respondent/complainant. A rejoinder was filed. The petitioner/accused also applied Section 315 of the Cr. P.C. for examining himself as his witness. The right to a fair trial of the

petitioner/accused was violated. The signatures of the petitioner/accused were forged, and it is necessary to compare the signatures to arrive at the truth. Hence, it was prayed that the present petition be allowed and the signatures be sent to the expert for comparison.

3. Mr. Sanjay Kumar Sharma, learned counsel for the petitioner/accused, submitted that the learned Trial Court erred in rejecting the application for leading additional evidence. This is violative of the right to a fair trial. He relied upon the judgment passed by this Court in **Cr.MMO No.806 of 2023**, titled **Saroj Kumari Vs. Harminder** decided on 05.12.2023, in support of his submission.

4. I have given considerable thought to his submissions made at the bar and have gone through the records carefully.

5. It is undisputed that the petitioner/accused had obtained the report from the Forensic Expert who was examined as DW2 before the learned Trial Court. The learned Trial Court noticed in its order that the report of the Forensic Expert has not been set aside, and the second Expert cannot be appointed. He relied upon the judgment passed by the Andhra Pradesh High Court in the case

titled *R. Bhaskar Reddy Vs. Chinni @ Chengal Reddy [(1998) 3 ALD 113]*.

6. Since the report of the Forensic Expert examined by the petitioner is still on record and has not been set aside, therefore, the learned Trial Court had rightly held that there was no necessity to send the signatures for comparison to another Forensic Expert. It was laid down by the Andhra Pradesh High Court in *Santhosh K.S. vs. State of Kerala and Ors.* (24.09.2024 - KERHC): MANU/KE/3572/2024 that the accused cannot insist that the disputed signatures be sent to another laboratory after getting adverse report. It was observed:

9. In the impugned Annexure A8 order dated 17.12.2024, the learned Magistrate has specifically mentioned that the expert who compared the signatures and prepared the Forensic Reports has not been examined by the accused as a witness. Without examining the said expert and analysing the opinion given by him, there is no bona fides in filing a petition to send the cheques to the Central Forensic Science Laboratory. The accused is stated to have been protracting the matter for the last several years under one pretext or the other. After obtaining an adverse report from the State Forensic Science Laboratory, it is not open for an accused to keep on demanding that the disputed signature be sent to another laboratory. As rightly observed by the learned Magistrate, the opinion of a handwriting expert is not substantive evidence, and the ultimate decision is that of the court. The petitioner is always at liberty to adduce appropriate evidence to prove that the signature did not belong to him. The learned Magistrate came to the conclusion that without examining the expert from the State Forensic Science Laboratory, who gave a report pursuant to the direction of the court, sending the cheque to the Central Forensic

Science Laboratory is only an attempt to delay the trial further. The said finding of the learned Magistrate cannot be said to be perverse in the circumstances of the case, warranting interference of this Court.

10. Section 45 of the Indian Evidence Act, 1872, which deals with opinion of experts, states that when the Court has to form an opinion as to the identity of handwriting, the opinion of persons specially skilled in such matters is a relevant fact. The views expressed by an expert are not conclusive and are, on the other hand, only an opinion. The parties are free to present evidence challenging its correctness, and the Court is the ultimate arbiter to arrive at its own conclusions on the basis of the evidence on record. The evidentiary value of the opinion of an expert depends upon the reasons given by him in his report. When direct evidence is forthcoming, even in respect of those aspects spoken to by an expert, the Court is not precluded from acting on such direct evidence, disregarding even the report of an expert.

11. The value of an expert's opinion should be adjudged in the same way as the evidence of any other witness, and the reasons given by the expert in forming the opinion are always open to scrutiny, and its soundness has to be tested in the light of the reasons given. In the decision in *Koragan v. Koran* [1978 KLT 872], it has been observed that it is always open to the opposite party to place materials in the form of cross-examination of the expert himself or other counter-evidence before the Court to shake the foundation on which an expert opinion is formed. The counter-evidence may be the opinion of another person who is equally an expert in the matter.

12. However, once a report was elicited from an expert through the process of court, it is not open for a party, that too in a private complaint under section 138 of the NI Act, to keep using the process of the court to obtain another report, without even setting aside the first report. Repeated references to experts through the court, for their opinion, when the report already obtained is unfavourable, is not a legally acceptable procedure to be resorted to in a trial. Otherwise, there will be no end to such requests, and it can even lead to an unending process with repeated requests. In this context it is relevant to refer to the decision of the Andhra Pradesh High Court in *R. Bhaskar Reddy v. Chinni @ Chengal Reddy* [MANU/AP/0351/1998 : (1998) 3 ALD 113], wherein it was held that a

party cannot seek an opinion from another expert when the earlier report was not favourable to him. Therefore, the challenge against Annexure A8 orders in all these cases fails.”

7. Thus, there is no infirmity in the order of the learned Magistrate.

8. It was submitted that the learned Trial Court had made certain observations concerning the merits of the case. Needless to say that these observations shall remain confined to the disposal of the petition and will not have any bearing on the merits of the case. Hence, the learned Trial Court will not be influenced by any observation made by the learned Trial Court while deciding the complaint.

9. It was submitted that the learned Trial Court had put the Court questions to the witness, and this was impermissible. This cannot be accepted. It was laid down by the Hon’ble Supreme Court in *State of M.P. v. Balveer Singh, 2025 SCC OnLine SC 390*, that the Court should not sit as a mute spectator or recording machine but should ask the questions from the witness to elicit the truth. It was observed:

“42. While it is true that primarily it was for the accused to question the IO to explain the delay in recording the statement of PW6, but at the same time the Trial Judge should not have remained a mute spectator, acting like a robot or a recording machine to just deliver whatever stands

fed by the parties. The role of a judge in dispensation of justice after ascertaining the true facts no doubt is very difficult one. In the pious process of unravelling the truth so as to achieve the ultimate goal of dispensing justice between the parties, the judge cannot keep himself unconcerned and oblivious to the various happenings taking place during the progress of the trial of any case. The presiding judge cannot afford to remain a mute spectator, totally oblivious to the various happenings taking place around him, more particularly, concerning a particular case being tried by him. The fair trial is possible only when the court takes an active interest and elicits all relevant information and material necessary so as to find out the truth for achieving the ultimate goal of dispensing justice with all fairness and impartiality to both parties. In *Munna Pandey v. State of Bihar*, 2023 INSC 793, this Court held that a presiding judge must cease to be a spectator and a mere recording machine and become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth.

43. Thus, even if the accused had failed in putting a question in regards to delay in examination of PW6, the presiding judge was duty-bound to put this question to the IO in exercise of his powers under Section 165 of the Evidence Act.”

10. Thus, no exception can be taken to the Court putting questions to a witness.

11. The petition shows that the application was filed because the petitioner/accused believes that the learned Trial Court is biased. This is an extraneous consideration and shows that the application was not *bona fide* but meant to prolong the trial, and could not have been allowed.

12. In *Saroj Kumari's case* (supra), the Court was concerned with the prayer of the accused to send the specimen signatures to the Forensic Expert for the first time. The report of another Forensic Expert was not placed on record; therefore, the cited judgment does not apply to the present case.

13. In view of the above, the present petition fails and the same is dismissed.

14. The observations made herein before shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

14th July, 2025
(mamta)