2026 INSC 1258

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 5516 of 2026
(Arising out of SLP (Crl) No.4478 of 2026)

Babita Chopra **...Appellant**

Versus

State (GNCT of Delhi) & Anr. **...Respondents**

O R D E R

Leave granted.

2. The appellant, the beneficiary of a Will executed by her brother, is aggrieved with the impugned order which refused to quash the criminal proceedings initiated by the 2nd respondent herein, the son of the executant of the Will. The Will, produced as Annexure P1, is said to have been executed on 29.04.2011 and registered on 04.05.2011. The executant passed away on 22.05.2013, upon which the appellant herein, along with her mother who were the joint beneficiaries of the Will filed a petition for probate numbered as Test. Case No.12 of 2014 produced herein as Annexure P2. The respondent herein along with his mother appeared in the testamentary case and filed their reply as by Annexure P3. In the testamentary case, the respondents sought to send the Will for

examination by a handwriting expert, since there was an allegation of forgery. The handwriting expert expressed a suspicion with respect to the execution by the deceased. It was opined as per Annexure R2 produced in the counter-affidavit, that the disputed signature of the executant for the reasons stated in the report were not written by the executant and deferred from the compared specimen signatures of the said person.

3. Based on the above report, an application under Section 156(3) of the Criminal Procedure Code, 1973[1], Annexure P6 was moved by the 2nd respondent which resulted in Annexure P7 direction to register an FIR, which stood registered as Annexure P8. The impugned order refused to quash the proceedings in a petition filed under Section 482. The mother of the executant and his wife are no more leaving the aunt and nephew to fight it out.

4. Sri K. K. Mohan, learned Counsel for the appellant, argued that the criminal proceedings cannot be sustained, especially when the probate case was pending. Specific reference was made to Section 41 of the Indian Evidence Act,

[1] In short 'CrPC'

1872[2], to contend that the judgment in a probate proceeding is a judgment in rem, which would even govern the criminal proceeding. It was pointed out that the criminal proceeding was initiated after a decade of the institution of the probate proceeding. The Will was registered and there were two attesting witnesses and the proof offered by the attesting witnesses would, in any way, be substantive evidence, negativing the expert opinion; which is essentially a weak evidence. It is also pointed out that the executant was estranged from his wife and son, as admitted by the 2nd respondent and there is no reason to doubt the intention of the testator.

5. Sri Navneet Chaudhary, learned AoR appearing for the respondent, however, would urge that the handwriting expert has clearly found discrepancies in the signature on the Will. It is also pointed out that during his lifetime, the executant was under the influence of his mother and sister and that led to the wife and the son being sent out of their home. There is absolutely no cause to quash the criminal proceeding, which has to take its due course. Sri Davinder Pal Singh, learned ASG

[2] Hereinafter referred to as 'the Evidence Act'

appearing for the State would rely on ***Syed Askari Hadi Ali Augustine Imam and Another v. State (Delhi Administration) and Another***[3] to contend that there is no cause to quash the proceeding. In the alternative, it is also submitted that this Court could keep in abeyance the criminal proceeding till a decision is arrived at in the testamentary case, especially since it was filed long prior to the initiation of the prosecution.

6. Before we look into the facts of the case, we may briefly look at the law on the subject, especially of the efficacy of the expert opinion as against substantive evidence.

7. ***Pandit Ishwari Prasad Misra v. Mohammad Isa***[4] held that '*Evidence given by experts of handwriting can never be conclusive, because it is, after all, opinion evidence*' (*sic* paragraph 26). Evidence regarding identity of the author of any document can be tendered either by examining the person who is conversant and familiar with the handwriting of that person or coupled with the testimony of a handwriting expert, the Court itself could compare the disputed document with the admitted one as held in ***State of Maharashtra v. Sukhdev Singh and Another***[5]. This Court also cautioned that

[3] (2009) 5 SCC 528
[4] 1962 SCC OnLine SC 88
[5] (1992) 3 SCC 700

the science of identification of handwriting is an imperfect and frail one, compared to the science of identification of fingerprints and, hence, the Court should be wary in placing implicit reliance on such opinion evidence.

8. In ***Syed Askari Hadi Ali Augustine Imam***[3], there was a Will executed in favour of the appellant in exclusion of the only legal heir, the respondent, who was the mother of the testatrix. The proceedings initiated by the appellant for mutation on the strength of the Will, which was registered after the death of the testatrix, was declined *inter alia* for the reason of a civil suit pending, instituted by the respondent. The respondent also filed a criminal complaint alleging forgery and also trespass into the property by the appellant. The questioned Will was sent for examination by the Forensic Science Laboratory and expert opinion indicated fundamental divergence in the signature as compared with the admitted signatures, beyond the range of natural variation. After cognizance was taken in the criminal case, a testamentary case was initiated. The application for discharge under Section 309 CrPC having failed, was challenged unsuccessfully before the High Court, which resulted in the proceedings before this Court. After examining the various precedents with respect to

simultaneous proceeding in a civil case and a criminal proceeding, it was held so in paragraph 32 as under: -

> ***"32.*** *It is, however, beyond any cavil that a judgment rendered by a probate court is a judgment in rem. It is binding on all courts and authorities. Being a judgment in rem it will have effect over other judgments. A judgment in rem indisputably is conclusive in a criminal as well as in a civil proceeding."*

9. The off-quoted principle that a civil case is decided on the basis of preponderance of evidence, while in a criminal case, the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given, was reiterated. It was noticed that in ***M.S. Sheriff v. State of Madras***[6], it was held that there is neither a statutory provision nor a legal principle that the findings recorded in one proceeding may be treated as final or binding on the other, as both the cases have to be decided on the basis of the evidence adduced therein. It was held that the mere pendency of a probate proceeding would not attract Section 41 of the Evidence Act and that the FIR was lodged not only with regard to forgery; prior to the testamentary case, but also on the cause of action, of a trespass. Having regard to the facts and circumstances of that

[6] (1954) 1 SCC 524

case, it was held that it is not a fit case where the discretionary jurisdiction under Article 136 of the Constitution of India could be invoked, especially, when there was no substantial progress in the probate proceedings.

10. Relevant in this context will be a three Judge Bench decision of this Court in ***Chennadi Jalapathi Reddy v. Baddam Pratapa Reddy (Dead) Through Legal Representatives and Another***[7]. Therein, the forgery was alleged of a sale agreement on the strength of which, a suit for specific performance was decreed, which decree was overturned by the High Court relying only on the expert opinion of the handwriting expert. It was held so in paragraph 10 as under: -

> *'**10.** By now, it is well settled that the court must be cautious while evaluating expert evidence, which is a weak type of evidence and not substantive in nature. It is also settled that it may not be safe to solely rely upon such evidence, and the court may seek independent and reliable corroboration in the facts of a given case. Generally, mere expert evidence as to a fact is not regarded as conclusive proof of it. In this respect, reference may be made to a long line of precedents that includes Ram Chandra v. State of U.P. [Ram Chandra v. State of U.P., AIR 1957 SC 381 : 1957 Cri LJ 559] , Shashi Kumar Banerjee v. Subodh Kumar Banerjee [Shashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR 1964 SC 529] , Magan Bihari Lal v. State of Punjab*

[7] (2019) 14 SCC 220

[Magan Bihari Lal v. State of Punjab, (1977) 2 SCC 210 : 1977 SCC (Cri) 313] and S. Gopal Reddy v. State of A.P. [S. Gopal Reddy v. State of A.P., (1996) 4 SCC 596 : 1996 SCC (Cri) 792].'

11. Specific reliance was placed on the Constitution Bench decision in ***Shashi Kumar Banerjee v. Subodh Kumar Banerjee***[8]*,* wherein it was observed that evidence of a handwriting expert can rarely be given precedence over substantive evidence. The handwriting expert's opinion was found to be inconclusive in ***Chennadi Jalapathi Reddy***[7] and therein, the testimony of the two attesting witnesses as well as circumstances surrounding execution of the Will was relied on, while holding that the opinion of a handwriting expert is a relevant fact under Section 45 of the Evidence Act. Section 47 was also noticed making relevant, opinion of any person acquainted with handwriting of the executant. Therein, the admitted and disputed signatures were examined, which were found to be virtually the same, albeit the Court making a caveat that the decision does not turn on such comparison and is on an appreciation of the evidence to reach at the conclusion of no forgery having been made. We also notice that therein the admitted signatures were those obtained subsequent to the

[8] AIR 1964 SC 529

suit; which however does not permit digression from the essential principles laid down.

12. We cannot but notice that the decision in ***Syed Askari Hadi Ali Augustine Imam***[3] turns on the facts and circumstances of that case. ***Sukhdev Singh***[5] clearly lays down a rule of prudence that opinion evidence cannot take precedence over substantive evidence and there should be corroboration before acting on such evidence. Though, there is no hard and fast rule as to the weight that could be attached to the opinion of a handwriting expert; definitely it cannot be viewed with suspicion and would depend upon the facts of each case. The indubitable principle is that the substantive proof offered regarding the execution of a document, overrides the expert opinion regarding the handwriting, in determining the genuineness of the document and the signature affixed therein.

13. With the above principles culled out, we would look at the facts of the case. As we noticed, the mother and the sister of the testator were the beneficiaries, who in the present case filed a testamentary case as early as in 2014. The persons excluded from the Will being the wife and son of the testator, were the respondents, who filed a reply, as is seen from Annexure P3. The facts stated in Annexure P3 have some relevance with

respect to the aspect of exclusion of the wife and son. The underlying theme in the objection filed by the respondents was the undue influence of the mother and sister, over the executant, which resulted in his estrangement from his own wife and son. However, it is pertinent that the testator had filed a petition for divorce in the year 1995, which stood dismissed for default, as contended by the respondents. Again, an application for restitution of conjugal rights was filed by the executant in the year 2003. It is the contention of the respondents that even as per the averments in the said application, there was an attempt by the wife in 1999 to resolve the dispute, on the strength of which, she was brought back home but later again forcefully evicted on 25.03.2003. The fact remains that the husband was estranged from his wife and son and was living with his mother and sister.

14. We cannot but notice the compelling fact that the Will was registered and the Registrar had clearly recorded that the same was presented by the executant and his left-hand thumb impression was affixed in his presence, as seen at the overleaf of Page No.1. There were also two attesting witnesses who had signed on the Will and also affixed their thumb impression at the time of registration. Pertinent is also the fact that the status

report filed by the Investigating Officer at Annexure P11 indicates that during the course of investigation, one of the attesting witnesses, namely Lovely Arora, summoned to the police station and interrogated, had given a statement that the executant had signed all the pages of the Will in front of him.

15. Relevant also is the contention taken by the respondents before the High Court in their counter-affidavit to the quash petition, as produced at Annexure R2-4. It is the specific contention of the 2nd respondent that the executant of the Will was a heart patient, suffering from diabetes and had been on regular treatment, who was brought dead to Max Hospital on 22.05.2013. The clinical history as received from the Max Hospital indicated as follows:

> *'Known case of - Type 2 diabetes mellitus/ Coronary artery disease/Double Vessel Disease/ Percutaneous transluminal coronary angioplasty (4 years back)/ Cerebrovascular accident'*

16. The Cerebrovascular accident is rightly pointed out by the 2nd respondent to be a stroke; which as is known could bring in changes in the handwriting of a person. The death occurred in 2013 when the 'Brought Dead Summary' was issued by Max Hospital, which indicated angioplasty four years back and the

Cerebrovascular accident; when the Will itself was executed and registered two years prior to the death, in 2011.

17. It is also to be reiterated that the mother of the testator is no more and there is no possible means by which it can be ascertained whether the discrepancy in signature, if at all found and established as a forgery, could be attributed to the mother or the sister. There is also the overwhelming substantive evidence of a registration made at the time of execution itself in the presence of two attesting witnesses which *prima facie* offers proof of the document and its due execution, which however has to be proved in the probate proceedings.

18. In the facts and circumstances of the case, we are convinced that there is no reason to continue the criminal proceedings, either against the appellant herein or the attesting witnesses who are arrayed as accused in the criminal case, as indicated from Annexure P8 FIR.

19. On the above reasoning, we are inclined to quash Annexure P7 Order of the Metropolitan Magistrate, East Karkardooma, Delhi, directing registration of the FIR and also FIR No.197 of 2024 dated 23.06.2024 registered at the Police Station, Laxmi Nagar, Delhi, under Sections 467/471 of the Indian Penal Code, 1860.

20. The appeal, hence, stands allowed, however, making it clear that the observations regarding the Will and the substantive evidence; which could be offered in the probate proceedings, are merely *prima facie* in nature and cannot govern the probate proceedings, which has to be decided on the basis of the evidence adduced in the testamentary case. We only found the criminal proceedings to be not sustainable, which even if the probate proceedings end in a rejection, would not entail revival of such prosecution on the facts hereinabove noticed, especially the death of one of the beneficiaries.

21. The probate proceedings shall be concluded expeditiously, but keeping in mind the principles as stated hereinabove of the evidence of a handwriting expert *vis-à-vis* substantive evidence, led in that proceeding.

22. Pending application(s), if any, shall stand rejected.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI;
NOVEMBER 17, 2026.