

Stereo. HCJDA 38
JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Crl. Misc. No. 60825/M/2021

Mian Tariq Aziz

Vs.

The State etc.

JUDGMENT

Date of hearing	16.12.2022
Petitioner by:	Mr. Jahangir A. Jhoja, Advocate.
State by:	Rana Tasawar Ali Khan, Deputy Prosecutor General.
Respondent No.2 by:	Mr. Muhammad Maqsood Buttar, Advocate.

Tariq Saleem Sheikh, J. – This petition under section 561-A Cr.P.C. challenges the judgment of the Additional Sessions Judge, Lahore, dated 17.09.2021, affirming the Judicial Magistrate's order of 16.06.2021, which dismissed the Petitioner's plea under section 249 Cr.P.C.

The facts

2. Respondent No.2 lodged FIR No.652/2017 dated 10.06.2017 against the Petitioner and his two sons (Bilal Tariq and Awais Tariq) at Police Station Liaqatabad, Lahore, for offences under sections 420, 467, 468 & 471 PPC. She claimed that she had inherited a piece of land measuring 07 kanals 03 marlas in Mauza Pindi Rajputan, Tehsil Cantt., District Lahore, from her father, Shah Muhammad, vide Mutation Nos.19206 and 19916. On 12.04.2017, she learnt from the *Halqa Patwari* that the Petitioner had presented him Sale Deed No. 8247 dated 06.08.1996, purported to have been executed by Shah Muhammad, for mutation of the aforementioned property in his name. She alleged that the said sale deed was bogus and did not bear her late father's signature or thumb impression. The police investigated case FIR No. 652/2017 and

submitted a report under section 173 Cr.P.C. The Judicial Magistrate indicted the Petitioner and summoned prosecution evidence. He applied for a stay of proceedings under section 249 Cr.P.C. on the ground that four civil suits concerning the disputed property were pending. The Judicial Magistrate dismissed his application vide order dated 16.06.2021 holding that civil and criminal proceedings could be conducted concurrently. The revisional court upheld that order. Hence, this petition.

The submissions

3. Mr. Jahangir A. Jhoja, Advocate, contends that the learned courts below have not appreciated the facts of the case properly while passing the impugned orders. He submits that the Petitioner owned a big tract of land in Mauza Pindi Rajputan on which he planned to build a mill (Pak Board and Paper Mills) after buying additional land. Consequently, in 1995 he made a deal with Shah Muhammad, who consummated the transaction in April 1996 through four sale deeds in his name, his wife Fouqia Tariq, and his son Bilal Tariq. These included Sale Deed No. 8247. Thereafter, Shah Muhammad delivered possession of the property to the Petitioner and his family. On 28.03.1996, in anticipation of the completion of the said transaction, the Petitioner got the building plan for the factory sanctioned. The counsel contends that Sale Deed No. 8247 was registered on 06.08.1996, while Shah Muhammad died on 31.10.2008. He lived for 12 years after the registration of the disputed document but did not challenge it. Respondent No.2 lodged FIR No. 652/2017 nine years after his death with ulterior motives. Mr. Jhoja claims that Shah Muhammad defrauded the Petitioner and his family because he did not have title to the aforesaid property. In the circumstances, Respondent No.2 has no right to initiate proceedings against them, even if Sale Deed No. 8247 is not genuine. In any case, since civil litigation is pending between the parties, the interest of justice requires that criminal proceedings be stayed until those matters are decided.

4. The counsel for Respondent No.2, Mr. Muhammad Maqsood Buttar, Advocate, has vehemently opposed this petition. He contends that in FIR No. 652/2017 the case of Respondent No.2 is that Sale Deed No. 8247 is forged and does not bear Shah Muhammad's signature or

thumb mark. Since the forensic report has confirmed it, there is sufficient evidence to prosecute the Petitioner. The law does not bar simultaneous civil and criminal proceedings. The counsel argues that the impugned orders do not suffer from any illegality or irregularity which may call for interference by this Court.

5. The learned Deputy Prosecutor General has supported Mr. Buttar.

Discussion

6. Civil law deals with the rights, duties, and obligations that individuals, governments, and organizations have to one another. Civil cases usually involve private disputes between them regarding those rights and obligations. On the other hand, criminal law is the foundation of the criminal justice system. It concerns crimes and their punishment. It seeks to preserve society's values, morality, and norms by checking inappropriate behaviour. According to Blackstone, "private wrongs are an infringement ... of the civil rights which belong to individuals ... public wrongs, or crimes ... are a breach and violation of the public rights and duties, due to the whole community ... in its social aggregate capacity."¹ The use of punishment to enforce criminal law has five commonly accepted goals: retribution, deterrence, incapacity, rehabilitation, and restitution. Each country has its own set of criminal laws and punishments for breaches.

7. It is trite that a single act can simultaneously trigger both civil and criminal legal action. "Proceedings for a civil wrong or a public wrong (offence) are independent and not mutually exclusive. Each set of proceedings has its own procedures, standards, and consequences."² The standard of evidence to determine the civil liability is the preponderance of evidence. In contrast, a criminal conviction is predicated on a higher standard of guilt, i.e., beyond a reasonable doubt, because it results in the loss of liberty.³

¹ William Blackstone, *Commentaries on the Laws of England*, Vol.4, pp. 4-5.

² *Taj International (Pvt) Ltd. and others v. Federal Board of Revenue and others* (2014 PTD 1807).

³ *ibid.*

8. People in our country frequently try to have recourse to civil and criminal law contemporaneously to settle their disputes. Hence, the question as to whether criminal and civil litigation can proceed concurrently inevitably arises. *Muhammad Akbar v. The State and another* (PLD 1968 SC 281) is one of the earliest cases in which the Hon'ble Supreme Court of Pakistan considered the issue. In that case, there was a dispute about ownership of a bus registered in the name of a firm. It was the subject matter of a suit for dissolution of the partnership, and while it was pending, one of the partners lodged FIR against the other for forcibly retaining the vehicle. The High Court stayed the proceedings in the criminal case till the disposal of the civil suit. The Hon'ble Supreme Court upheld that order and ruled:

“Normally, it is true that criminal proceedings should not be postponed pending the disposal of civil litigation connected with the same subject-matter. But where it is clear that the criminal liability is dependent upon the result of the civil litigation or is so intimately connected with it that there is a danger of grave injustice being done in the case if there be a conflict of decisions between the civil court and the criminal court. In such an event, it is equally clear that the criminal court has not only the right to but should also stay its hands until the civil litigation is disposed of, for, it is not desirable that when the title to the property itself is in dispute, the criminal courts should give a finding in respect of the same question.”

9. In *Muhammad Akbar*, it was the High Court, not the civil court, that stayed the criminal proceedings while exercising inherent jurisdiction under section 561-A of the Cr.P.C. Commenting on this aspect, the Hon'ble Supreme Court said:

“There can be no doubt that the High Court has this power under section 561-A Cr.P.C., but the only question as to whether it should exercise this power in civil proceedings in respect of the same or substantially the same subject-matter are also pending. There is now a consensus of opinion that there is no invariable rule that a criminal proceeding should be stayed pending the decision of the civil suit but the matter is one of discretion entirely. In exercising this discretion the guiding principle should be to see as to whether the accused is likely to be prejudiced if the criminal proceeding is not stayed. In cases of disputed title where it is difficult to draw a line between a *bona fide* claim and the criminal action alleged, a stay can be made in the proper exercise of that discretion.”

10. In *Muhammad Tufail v. The State and another* (1979 SCMR 437), FIR was registered against the petitioner accusing him of preparing a forged sale agreement while civil litigation over the document was pending. He petitioned the High Court to quash that FIR on the ground that the document's legitimacy was *sub judice* before the civil

court. The Hon'ble Supreme Court ruled that there is no legal impediment to civil and criminal actions continuing at the same time. The petitioner had prayed for proceedings to be quashed rather than stayed. If the evidence adduced during the proceedings shows that the matter only involves a question of civil liability, and that the proceedings before the criminal court are an abuse of the process of the court, he may apply again for the quashing of FIR. The apex Court ruled that it was not the proper stage for him to seek quashing of the proceedings because the Magistrate had just summoned the petitioner and had not taken any other action.

11. In *Abdul Haleem v. The State and others* (1982 SCMR 988), the High Court had invoked section 561-A Cr.P.C. and quashed the criminal proceedings mainly on the ground that the dispute between the parties was of civil nature. It was argued before the Hon'ble Supreme Court that quashing of FIR was contrary to the established principles of the administration of criminal justice because it stifled the prosecution and enabled the respondents to avoid accountability for the alleged offences. The apex Court held that even though the impugned documents are the same in both civil and criminal cases, the mere fact that a civil lawsuit is pending does not absolve the accused of criminal liability if the stated facts show the commission of an offence. Generally, it is advisable to stay criminal proceedings until the conclusion of civil litigation between the parties to avoid a conflict of findings on the same questions by civil and criminal courts. The Supreme Court held that the High Court should have followed the rule enunciated in *Muhammad Tufail v. The State and another* (1979 SCMR 437), supra. It modified the High Court's order and, instead of quashing the criminal proceedings, directed that they shall remain stayed till the decision of the civil litigation.

12. In *Akhlaq Hussain Kayani v. Zafar Iqbal Kiyani and others* (2010 SCMR 1835), the complainant's father-in-law died; four years later, his wife also passed away. He lodged FIR against the private respondents accusing them of fabricating documents and selling his father-in-law's car. Before that, he instituted a civil suit on the same facts seeking a declaration that the transfer letter was bogus and ineffective against his rights. As an alternative relief, he pleaded for a decree for the amount of his share of the disputed car's sale proceeds. The accused/respondents objected that the

complainant had no *locus standi* to lodge the FIR because he had no concern with the vehicle. At the most, his late wife could be the claimant, but she omitted to lay a claim in her lifetime. In any event, his claim regarding ownership of the car depended on the decision of the civil suit. The accused filed a petition under section 561-A Cr.P.C. upon which the High Court quashed the FIR. The complainant sought leave to appeal against that order. The Hon'ble Supreme Court held that civil liability is independent of criminal liability, and there is no absolute rule requiring that criminal proceedings must remain pending till the decision of the civil suit. It is purely a matter of discretion. The court should always see whether the accused would be prejudiced if the criminal proceedings continue. When it is clear that criminal liability is dependent on the outcome of civil litigation, then criminal proceedings must be stayed, especially when the dispute relates to the title of property. In the aforesaid case, the Supreme Court noticed that the complainant's eligibility to lodge the FIR depended on the outcome of the civil suit, so it set aside the High Court's order to the extent of quashing the FIR. However, it directed it would not proceed until the decision of the civil suit.

13. The law enunciated in the above cases has been consistently followed. It is unnecessary to burden this judgment with more citations.⁴ Nevertheless, I may refer to a few instances in which the court allowed civil and criminal proceedings to run side by side. In *Malik Khuda Bakhsh v. The State* (1995 SCMR 1621), the petitioner was an Overseas Employment Promoter and used to send people abroad for employment under a licence issued by the Government. Four persons made a complaint to the FIA against him that he fraudulently deprived them of Rs.83,000/- on the pretext of sending them abroad for a job and also issued a receipt in this regard. They also lodged FIR against him for an offence under Emigration Ordinance, 1979, and the Passport Act, 1976. The FIA submitted his *challan* in the Court of the Special Judge (Central), Rawalpindi. The petitioner claimed that the receipt was not genuine and was a piece of forgery. He challenged it in the civil court and asked the Special Court to

⁴ See for example: *A. Habib Ahmed v. M. K. G. Scott Christian and others* (PLD 1992 SC 353); *Abdul Ahad v. Amjad Ali and others* (PLD 2006 SC 771); and *Sajjad Hussain Mukhi v. The State and others* (2014 SCMR 1741).

stay the criminal proceedings till the decision of the civil case. The Supreme Court observed that the prosecution case was not based on the disputed receipt alone. Four witnesses also supported it. In the circumstances, the Special Court could determine the document's authenticity by comparing the petitioner's signature with the one on the receipt or by seeking an expert opinion. The question whether the accused was guilty has to be decided on the basis of the ocular and documentary evidence produced during the trial. The apex Court also pointed out that a civil court's judgment was not admissible in criminal proceedings to establish the truth of the facts upon which it was rendered. The petitioner's request for a stay of proceedings was declined.

14. In *M. Aslam Zaheer v. Ch. Shah Muhammad and another* (2003 SCMR 1691), the complainant instituted a private complaint under sections 420, 468, and 471 PPC against the respondents alleging that they had removed the machinery lying in the warehouse without his permission. The Additional Sessions Judge summoned them to stand trial. The High Court noted that the parties had signed an agreement with an arbitration clause for resolving disputes between them. It, therefore, held that criminal action was not maintainable and quashed the summoning order. The Hon'ble Supreme Court overturned that decision holding that criminal liability is always treated separately from civil liability.

15. In *Seema Fareed and others v. The State and another* (2008 SCMR 839), the parties entered into a building and land development contract. During the course of business, disputes arose between them. Following the development of land and the booking of plots/flats, the respondent was issued seven crossed cheques for Rs.1,00,000/- each. All of these were dishonoured upon which he lodged FIR under sections 420, 406, 114, 109, 34 & 489-F PPC. The High Court found that the ingredients of the offences alleged against the petitioners were, *prima facie*, made out and refused to quash the FIR. It held that it would "neither be just nor fair and proper" to stifle the criminal proceedings at the nascent stage. The Supreme Court agreed and observed:

"It is well-settled that a criminal case must be allowed to proceed on its own merits, and merely because civil proceedings relating to the same transaction have been instituted it has never been considered to be a legal bar to the maintainability of criminal proceedings which can proceed

concurrently because conviction for a criminal offence is altogether a different matter from the civil liability. While the spirit and purpose of criminal proceedings is to punish the offender for the commission of a crime the purpose behind the civil proceedings is to enforce civil rights arising out of contracts and in law both the proceedings can co-exist and proceed with simultaneously without any legal restriction.”

16. In *Muhammad Tariq v. Additional Sessions Judge, Dunyapur, and others* (2012 PCr.LJ 285), the petitioner instituted a suit for the specific performance of a sale agreement involving a landed property. The private respondent lodged FIR against him under sections 420, 468 & 471 PPC claiming that the sale agreement was forged. The petitioner argued that criminal proceedings should be stayed until the civil matter was decided and resumed if the agreement was proven to be fabricated. The High Court held that the pendency of the civil suit does not preclude criminal proceedings. It reasoned that the petitioner could not profit from his own wrong. The civil case usually takes a long time to conclude, sometimes over several years. If someone commits a cognizable offence, he should not be spared and allowed to reap the benefits of his wrongdoing for an extended period of time, depriving the aggrieved person of his valuable rights. If a person prepares a forged document and then files a suit for specific performance based on it, he cannot be excused from criminal liability because refusing to initiate criminal action against him would perpetuate an illegality.⁵

17. In *Muhammad Aslam v. The State and others* (2017 SCMR 390), the private respondent had given an indemnity bond accompanied by post-dated cheques to a financial institution in respect of a loan that it extended to his son to study abroad. When his son returned to Pakistan, the respondent filed a civil suit, claiming that the indemnity bond and post-dated cheques were unenforceable because he had given them under duress. Meanwhile, the educational institution presented one of the cheques for payment through its bank which was dishonoured, prompting it to lodge FIR under section 489-F PPC. The Supreme Court pointed out that the subjects of the civil suit and the criminal case were distinct. The former concerned the educational institution’s authority to amend its rules and

⁵ Also see: *Abdul Qadir Khan Mamdot v. Regional Police Officer, Multan, and others* (2011 MLD 1773) *Mst. Parveen Bibi v. Justice of Peace, Tehsil Mailsi, District Vehari, and others* (2012 PCr.LJ 8) and *Allah Ditta v. Additional Sessions Judge, Sheikhupura, and others* (PLD 2011 Lahore 246).

their application to the respondent's son. On the other hand, the criminal case was about the dishonest issuance of a cheque and its dishonouring and regarding the respondent's criminal liability in that regard. The apex Court allowed the appeal and directed that the criminal proceedings continue.

18. In *Dr. Sikandar Ali Mohi ud Din v. Station House Officer and others* (2021 SCMR 1486), the appellant purchased a piece of land in Mauza Gohawa. The respondent asserted ownership on a portion of the same Khasra through a separate sale deed dated 22.4.2003 executed on the basis of Fard Malkiat No. 942. The appellant filed a complaint with the DCO alleging that the Fard Malkiat was forged. The latter appointed an inquiry officer who determined that the accusation was true. Thereupon, the appellant lodged FIR against the respondent, which the High Court quashed since civil litigation was in progress. On appeal, the Hon'ble Supreme Court held that the matter was criminal and that the DCO's inquiry and the police investigation both established that the respondent had committed a crime. The criminal case could not be closed with a single stroke of the pen merely because civil litigation was pending. Criminal and civil proceedings can co-exist if the legal foundation is robust.

19. The following principles may be deduced from the cases cited above:⁶

- (i) The object of civil proceedings is to enforce the civil rights of the people, while the purpose of criminal proceedings is to punish the offender for committing an offence.
- (ii) The High Court has jurisdiction under Article 199 of the Constitution and section 561-A Cr.P.C. to stay criminal proceedings to meet the ends of justice where civil litigation is pending.
- (iii) No universal rule says that if the subject matter of a civil suit and a criminal case is the same or similar, the criminal proceedings must be automatically stayed.
- (iv) The decision to stay the criminal proceedings is entirely at the court's discretion. The guiding principle, however, is whether the accused would be prejudiced if the proceedings continue. If his criminal liability is dependent on the outcome of civil litigation or is so inextricably linked with it that there is a danger of grave

⁶ *Meera Shafi etc. v. Federation of Pakistan etc.* (PLD 2022 Lahore 773).

injustice if there is a conflict of decisions, criminal proceedings must be held in abeyance.

- (v) If *prima facie* an offence has been committed, the ordinary course of the trial should not be impeded by resorting to the High Court's constitutional jurisdiction or the provisions of section 561-A Cr.P.C.

The case at hand

20. This is not a case where one party relies on a sale agreement and has filed a suit for its specific performance in the civil court while the other claims it is fake. It is also distinguishable from the case of ***Malik Khuda Bakhsh***⁷ discussed above. It has its peculiar facts which are given below.

21. Respondent No.2 claims that Sale Deed No.8247 dated 06.08.1996 is bogus. The Petitioner has produced documents which *prima facie* show that on 03.12.1995 Shah Muhammad executed an agreement with the Petitioner in respect of the land measuring 03 kanals 15 marlas and agreed to sell it to him for Rs.616,000/- He received Rs.100,000/- as earnest money, of which Rs.50,000/- was in cash and the remainder in two cheques of Rs.25,000/- each drawn on the MCB Bank Limited, Township Branch, Lahore. The same day, i.e. on 03.12.1995, Shah Muhammad delivered possession of the land to the Petitioner.

22. Admittedly, in addition to the above-mentioned land, Shah Muhammad sold another land to the Petitioner, his wife Fouqia Tariq, and son Bilal Tariq through three other sale deeds. Respondent No.2 did not challenge those transactions. The detail of those sale deeds is as follows:

- (i) Sale Deed No.3333, Book No.1, Volume No.2394, registered with the Sub-Registrar, Lahore, on 07.04.1996, in respect of land measuring 09 marlas in favour of Fouqia Tariq, wife of the Petitioner.
- (ii) Sale Deed No.3332, Book No.1, Volume No.2394, registered with the Sub-Registrar, Lahore, on 07.04.1996, in respect of land measuring 07 marlas in favour of Bilal Tariq, son of the Petitioner.
- (iii) Sale Deed No.3334, Book No.1, Volume No.2394, registered with the Sub-Registrar, Lahore, on 07.04.1996, in respect of land measuring 09 marlas in favour of the Petitioner.

⁷ *Malik Khuda Bakhsh v. The State* (1995 SCMR 1621).

23. The Petitioner has submitted a copy of the building plan of *Pak Board and Paper Mill* sanctioned by the competent authority on 28.03.1996 which includes the disputed land. Shah Muhammad lived for 12 long years after the registration of Sale Deed No.8247, but neither he challenged it nor instituted any proceedings to recover possession of the land in question. Respondent No.2 lodged FIR No.652/2017 nine years after his death.

24. Respondent No.2 maintains that she came to know about the registration of Sale Deed No.8247 on 12.04.2017 through the *Halqa Patwari* when the Petitioner presented it to him for mutation. However, the record contradicts her. It shows that she filed a complaint about the said sale deed with Police Station Liaquatabad in 2012. Mahmood Ali/SI conducted an extensive inquiry and it was disposed of as a result of his findings.

25. This is not all. Shah Muhammad had mortgaged the land to Sajjad Hussain etc., and failed to redeem that mortgage within 60 years. Resultantly, Sajjad Hussain etc. filed a suit seeking a declaration that his title had been extinguished and that they had become its owners. On 07.07.1994, the said suit was decreed *ex parte*. Respondent No.2 applied under section 12(2) CPC to have it set aside, but the civil court dismissed his application on 05.11.2015. Respondent No.2 assailed that order in revision, which the Additional District Judge dismissed on 17.08.2020. According to Mr. Jhoja, the judgment and decree dated 07.07.1994 has attained finality, and Respondent No.2 has no right or interest in the aforementioned land.

26. On 29.06.2011, the Petitioner filed a suit against Respondent No.2 seeking a declaration regarding his title and permanent injunction. On 02.05.2017, the latter instituted a lawsuit against the Petitioner for cancellation of Sale Deed No.8247. Earlier, she got sanctioned Mutations No.19206 and 19916 regarding the inheritance of Shah Muhammad in respect of *Khasra* Nos. 510 and 511 of Mauza Pindi Rajputan. Then, on 08.12.2015, she filed a suit for possession (along with permanent injunction) against the Petitioner regarding land measuring 07 kanals 03 marlas comprised in those khasras which was decreed *ex parte* on

26.04.2016. The Petitioner has filed an application under Order XXI Rule 99 & 103 read with section 151 CPC objecting to the execution of that decree. All these proceedings are currently pending.

27. The dispute between the Petitioner and Respondent No.2 involves intricate questions of law and facts. *Prima facie*, the eligibility of Respondent No.2 to lodge FIR No.652/2017 is also contingent on the outcome of the civil litigation.

28. Mr. Buttar's main thrust is on Report No.291991 dated 23.08.2017 of the Punjab Forensic Science Agency which, according to him, establishes that Sale Deed No.8247 is forged and proves that the Petitioner is guilty of the alleged offence. The said report concludes as follows:

“After a complete examination, six questioned thumb impressions marked as Q-1, Q-2, Q-3, Q-4, Q-5, and Q-6 under the name of Shah Muhammad on “Baye Nama, Dastawaiz No.8247” (Item No.1) found to be **non-genuine/forged impressions**.

“Hence, six questioned thumb impressions marked as Q-1, Q-2, Q-3, Q-4, Q-5, and Q-6 under the name of Shah Muhammad are **non-genuine/forged impressions therefore comparison cannot be conducted.**”

(emphasis added)

29. Articles 61, 78, and 100 of Qanun-e-Shahadat, 1984, are relevant to the discourse. Article 61 addresses the circumstance in which the court must form an opinion about the person who wrote or signed a document. It states that the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed is a relevant fact. Article 78 deals with the proof of a person's signature and handwriting. It stipulates that if a question arises whether a document has been signed or written by a certain person, his signature or handwriting, as the case may be, on that document must be proved. Article 100 attaches some presumptions to thirty years old documents.

30. Parliament has recently amended section 510 Cr.P.C. through the Code of Criminal Procedure (Amendment) Act, 2022,⁸ and made the report of the forensic scientist and the handwriting expert admissible *per se*. As a result, their reports may be used as evidence in an inquiry, trial, or other proceedings without calling them to the witness box. However, the

⁸ Published in the Gazette of Pakistan (Extraordinary) on November 18, 2022.

court may summon and examine that expert if it is necessary for justice. Even before the aforesaid amendment, the jurisprudence was that the handwriting expert's opinion was relevant but was a weak type of evidence. It should not be treated as conclusive evidence to prove a fact. Reliance is placed upon *Syed Ali Nawaz Gardezi v. Lt.-Col. Muhammad Yusuf* (PLD 1963 SC 51); *Mst. Saadat Sultan and others v. Muhammad Zahur Khan and others* (2006 SCMR 193); *Muhammad Ishaque Qureshi v. Sajid Ali Khan and another* (2016 SCMR 192); *Wajeeh-ul-Hassan v. The State* (2019 SCMR 1994); and *Muhammad Samiullah v. The State* (2022 SCMR 998).

31. The superior courts have considered section 510 Cr.P.C. in several cases. Albeit these were decided before the above-mentioned amendment, the principle enunciated by them fully applies to the reports of the forensic scientist and the handwriting expert in the current framework. In *Sardar Ali v. Judge Special Court, Multan, and another* (1996 MLD 460), the Hon'ble Supreme Court of Pakistan held:

“Applying the above principle to the facts and circumstances of this case we have no hesitation to hold that the report submitted by the firearm expert cannot be treated as a circumstance, leading to inference that no unlicensed Kalashnikov recovered from the accused was used in the commission of the offence. The allegation of use of the aforesaid weapons is mentioned in the supplementary statement of the complainant, the statement of the prosecution witnesses. The question as to whether any reliance can be placed upon these reports is to be answered by the trial Court on recording the evidence of the parties and after dealing with the aforesaid report within the terms of section 510 Cr.P.C. No doubt any report of the Chemical Examiner or Assistant Chemical Examiner to Government or of the Chief Chemist of the Pakistan Security Printing Corporation Ltd., or any Serologist, the fingerprint expert or firearm expert appointed by Government upon any matter or thing duly submitted to him for examination or analysis, can be used as evidence in any inquiry, trial or other proceedings under Cr.P.C. Such opinion is one of the species of evidence and the court had been given powers to summon such person for the purpose of examination. The proviso to section 510 Cr.P.C. makes it amply clear that any such opinion is of no conclusive and decisive significance and has to be assessed by the trial court.”

32. An expert's report, even if it is from a handwriting expert, is still an opinion that can be erroneous. Hence, it is not immune from judicial scrutiny. Its worth is determined by the expert's reasoning for reaching his conclusion. While interpreting section 510 Cr.P.C. (and the above-mentioned amendment), on the one hand, we must distinguish between the admissibility and the procedure for adducing the handwriting expert's report in evidence and, on the other hand, its probative value. The law only

makes the report admissible without the expert's examination, but it is not conclusive evidence. The probative value of the report must depend upon a variety of circumstances.

33. I conclude that any such opinion mentioned in section 510 Cr.P.C. is not conclusive and must be evaluated by the court.

34. The forensic report referred to by Mr. Buttar in the present case is unclear. It has generated more questions than answers. The authenticity of Sale Deed No.8247 cannot be determined without a proper trial by the civil court where lawsuits of both sides are pending. It is just and appropriate that the proceedings in FIR No.652/2017 be stayed till the final decision of the civil cases. Order accordingly.

35. This petition is accepted and the impugned orders dated 16.06.2021 and 17.09.2021 are set aside.

(Tariq Saleem Sheikh)
Judge

Naeem

Announced in open court on _____

Judge

Approved for reporting

Judge