III WORK SHOP ARTICLE

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REFERENCE OF DOCUMENTS TO EXPERTS FOR OPINION

INTROCUTION:

On 25.05.2018, the Honourable High Court of Telangana & Andhra Pradesh, has stated in “Lakkineni Suryanarayana Vs. Lakkineni Ramesh” that “It is clear that when a dispute arise in respect of signature in documents, the disputed signatures can be referred to an expert along with contemporaneous admitted signatures, calling for his opinion at any stage of the case proceedings before a court”. “It is further said by the Honourable Court that there was no limitation to take such steps and could call for records available with the officials to resolve the dispute.”

The above statement of the Hon’ble Court suggest us the importance of expert opinion in certain cases.

Generally evidence is divided into 3 categories (1) oral (2) Documentary (3) Material Evidence supplied by material objects for inspection of court. But, the Indian Evidence Act, 1872 recognizes the first two categories . Where we see the second category of evidence i.e., the documents are either public or private, the Indian Evidence Act has provided some provisions to prove the validity of the documents, produced before the court.

The legal provisions are not in dispute that mere production and marking of a document as an exhibit by the court cannot be held to be as due proof of its contents or does not dispense with its proof. Therefore, any document produced by any of the parties necessarily requires to be proved in the manner as provided under the Indian Evidence Act.

Definitions of Document:-

According to Sec.3 of Indian Evidence Act, 1872, “Document” means “any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used or which may be used, for the purpose of recording that matter.

According to Sec.29 of Indian Penal Code, 1860, the word “document’’ denotes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

According to Sec.3(18) of General Clauses Act, “Document” shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means which is intended to be used or which may be used for the purpose of recording that matter.

According to Sec.95(2)(b) of Criminal Procedure Code, 1973, “Document includes any painting, drawing or photograph or other visible representation.

Burden of Proving Document:-

The general rule with regard to the burden of proving the facts is that “He who asserts, must prove”. The reason behind this rule is that he who drags another into the court must bear the burden of proving the facts, which he asserts.

The burden of proof of documents is understood in the following two series.

(1) Firstly, it means establishing the whole case.
(2) Secondly, it means introducing evidence at any particular stage of the proceedings.

It can be known from Sec.101 to 114 of the Indian Evidence Act. Especially Sec.101 imposes the burden of proving a fact on that person who substantially alleges an affirmative of the issue under this provision. Whenever a person desires the court to give judgment as to any of his legal right or liability of the other based on the existence of the facts, which he asserts, it is necessary that he must prove the existence of those facts, even with documentary evidence. Section 102 fixes the burden of proving the facts in any suit or proceeding on that person who would fail, if no evidence at all were given on either side.

So that, if a person want to prove the legality of any document for his favour, the burden generally lies on him to prove it in court of law. Whenever a question as to the good faith of a transaction between the parties arises and one of the parties stands to the other in a position of active confidence, the burden of proving the good faith of the transaction shall be on that party, who is in a position of active confidence.

According to Sec.111 of Indian Evidence Act, when two parties enter into a transaction standing on equal footing, it can be presumed that there is good faith in the transaction, but when they stand in an uneven position one occupying a superior position to that of the other party, the burden of proving the presence of good faith in the transaction shall be on the person occupying such position of active confidence. The above is stated in “Daya Shankar Vs. Bachi” (AIR 1982 A11 376) by the Apex court of India.

So that it is the duty of the court to allow the appropriate parties of the case to prove the transaction in between them with good faith, but not to allow the outsider of the case.

When are opinions relevant:-

The general rule is that opinion of third parties are irrelevant. Ordinarily, the court is not interested in anyone’s opinion, however eminent he may be, but only in facts, and it is the court that forms its opinion on the proved facts. But there are exceptions which are set out in sections 45 to 51 of Indian Evidence Act.

In **Mobarik Ali Ahemd Vs. State of Bombay (AIR 1957 SC 857),** the general rule laid down by the Supreme Court is that a witness must confine himself to the facts and not to the stating of his opinion. Forming of opinions on the basis of evidence adduced before the court is a Judicial function and the court cannot delegate this function to the witnesses in regard to the matters under its enquiry. But, when the subject matter of court’s enquiry is of such a nature that it so partakes of the character of science, Art, where special skill, special training or special study is required for the formation of an opinion, then the court may seek the assistance of such persons, who are specially skilled or specially trained in that particular subject.

After all the courts are manned by human beings and naturally the knowledge of the judges is limited to possess the law of the land. Possessing the knowledge of every subject is only a sign of divinity. Therefore, when the subject matter of court’s enquiry involves is of scientific nature, it is necessary for the court to rely on the opinion of expert witnesses.

As it is laid down by Supreme Court in **State of Himachal Pradesh Vs. Jailal (AIR 1999 SC 3318)** that “However an expert is not a witness of fact and his evidence is reality an advisory character. The duty of an expert witness is to furnish the judge with the necessary scientific criteria for testing the accuracy of the conclusions, so as to enable the judges to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case.”

Need to refer the document to experts by the court:-

Regarding the proof of the validity of the documents, it is classified either under public or private documents.

Public Document:-

Sec. 74 of Evidence Act deals the terms public document and given certain list. This section has to be read in conjunction with Sec.35 of the Act. Sec.35 makes the entries in public or official records relevant.

But the mode of proof of a public document is dealt with sections 76 to 78 of the Act. The admissibility and effect of public document other than judicial records are dealt with in Sec.35 to 38 of the Act. The admissibility and effect of judgment of court are dealt with in Sec.40 to 44 of the Evidence Act.

Private Documents:-

The private documents may be of different kinds. Contracts, memoranda, letters, deeds etc., are called private documents, apart from documents which are registered like gift, sale and others.

The mode of proof of private documents is laid down in sections 61 to 73 of Indian Evidence Act. Out of sections 61 to 73, Sec.67 deals with proof of signature and handwriting.

In "**Sardar Prahlad Singh Vs. Syed Ali Mura Raja" (ALD 741, 1997 (3) ALT 562),** the Andhra Pradesh High Court held that the proof of private documents is covered by sections 47, 61 to 73 of the Indian Evidence Act and then presumption can be drawn only in respect of documents old by 30 years or more under sec.90 of the Act. It was further held that private documents have to be proved by producing the original, except in cases, where secondary evidence is permissible as laid down in Sec.63 & 65 of the Act, so that it can be proved by production of a certified copy both under sec. 65 and 77 of the Act.

So that the Indian Evidence Act is dealing the validity of certain kinds of documents by providing the stipulated provisions of its own. If the court needs to refer the document to experts for opinion, rather than finding of its validity by referring to the above provisions of the Act, we have sec.45 to 47-A of the Act to know the validity of certain documents by referring them to experts.

Competency of the expert witnesses:-

It is necessary that the competency of the expert witness, who expert testimony to be admitted must be satisfactorily established. It is for the court to determine the competency of an expert witness. In determining the competency of the expert, the court may have to take the qualifications in particular field to which the court enquiry pertains. Section 45 does not lay down qualifications of expert when opinion can be relevant.

The opinion of expert witness can also be contradicted and rebutted by showing that he gave a different opinion on the other occasion in a similar matter or by producing a standard treatise relevant to the subject matter of enquiry.

The opinion of an expert witness can also be contradicted by engaging another expert witness.

Opinion is admissible in certain matters:-

Where the court has to form an opinion upon (1) Foreign Law (2) Science (3) Art (4) Identify of handwriting (5) Finger prints, section 45 enables the court to receive the opinion upon that point of persons specially skilled in such relevant fields.

Very often expert opinion is made admissible is sciences of (a) medical (b) handwriting (c) finger prints (d) fire-arms (e) Poro-scopy (f) DNA, finger printing, so on and so forth.

Opinion of experts on Medical Sciences:-

In criminal proceedings very often expert opinion of medical men is taken. It is admissible in certain matters under different circumstances. As it is laid down by Supreme Court in "**Ram Bali Vs. State of Uttar Pradesh" (2004 Cr.C.J.20490, AIR 204 SC 2329)** that the matters of identification, causes of death, nature of injuries etc., sometimes, it becomes necessary to identify the remains of a particular person when the skeleton remains are discovered. Sometimes it becomes necessary to know the cause of the death of a person or the probable time of the death of a person. Medical science has not yet advanced to such perfection so as to determine the exact time of the death nor can the same be determined in a computerized or mathematical fashion so as to accurate to the last second.

Opinion on scientific and expert evidence:-

Modern scientific developments have made a serious impact on the law of evidence. In several areas such as (a) blood stains (b) blood groups (c) alcohol and breathe tests in case of traffic accidents (d) tape recordings (e) Automatic photographs (f) computers (g) identification of fibers including human hair (h) Arson investigation (i) Truth drugs and lie-detectors (j) finger and foot prints and (k) even hypnotism, the law of evidence tries to keep pace with scientific knowledge and utilize its result to arrive at the truth.

Evidentiary value of opinion of handwriting experts:-

Disputes relating to the identity of handwriting from bulk of courts work very often the genuine execution of document is required to be proved in court proceedings as the execution of a document is either denied or the signature of the person on the document is alleged to be forged.

Handwriting experts in the formation of an opinion as to the identify of handwriting take the following factors into consideration (a) movement of hand (b) skill of the writer (c) connections between letters (d) shading of the letters (e) Embellishment adopted (f) terminals of particular words (g) width of the letters (h) space between letters (i) speed writing (j) pen-hold (k) pen-pressure. By observing the above methods, the experts may give their opinions.

Admissibility of DNA finger printing under Act:-

The latest and the most revolutionary science that has emerged in recent years is DNA technology that is DIOXY RIBO NUCLEIC ACID TEST. By this method, it is possible to fix the paternity or maternity of a child with 100% certainty. Also whereas crime has been committed and some blood is available at the scene of the offence, from that blood it can be said to whom that blood belongs with all certainty.

In **Sanjay Singh Vs. State of Delhi (2007 Cr.L.J 964)** the Delhi High Court held that DNA test conducted against the accused as finding the sperm in vaginal swabs of the deceased girl is conclusively established the guilt of the accused and awarded punishment.

Conclusion:-

The courts normally look at expert evidence with greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially, if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. Where the eye witness on account is found credible and truthworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive. The expert witness is expected to put before the court all material inclusive of the data, which induced him to come to the conclusion and enlighten the court on technical aspects of the case by examining the terms of science. So that the court, although not an expert, may form its own judgment on those material after giving due regard to the expert opinion, because once the expert opinion is accepted, it is not the opinion of the mere experts, but that of the court. The skill and experience of the expert is the ethos of his opinion, which itself should be reasoned and convincing. Not to say that no other view would be possible but if the view of the expert has to find due weightage in the mind of the court.

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APPRECIATION OF EXPERTS EVIDENCE

INTRODUCTION:-

Scientific expert testimony continuous to expand to areas that are more complex and technical. It is relevant and decisively important in a rapidly growing world ushering in new inventions and inactions. Now a days it is unthinkable in a criminal litigation to establish a crime without scientific proof. All branches of science have advanced enormously. Forensic science has emerged as good hand, aiding, guiding the adjudicating body. Moreover, the developments in science result in the formulation of several new disciplines. This paves the way for the introduction of new techniques and proliferation of experts.

This development of science and technical expert testimony in the complex and technical issues has flooded the Judicial System. The questiong its reliability and admissibility has also plagued the court and engendered much debate. The issue of admissibility has attracted the attention of countless commentators.

In our country, there is no duty entrusted to the trial judges either by Supreme Court of law to screen the scientific evidence before entering the admissibility threshold. The opinion of a witness possessing expert knowledge in admissible is the fact upon which the enquiry is to be made is such that ordinarily persons cannot form a correct judgment with their common knowledge and skill. What sec.45 of Indian Evidence Act mandater is that he must be a person having special skill on the subject provided. If he had, then his opinion is a relevant fact. Thus the relevance of an experts opinion is closely connected with competency. Therefore, courts were considering competency of the experts as a criteria for admissibility rather than reliability of the scientific thereby or technique he used for arriving at a particular conclusion.

Courts should be slow in basing their findings on mere hand writing experts opinion

Where in a suit for specific performance of agreement the attesting witness had deposed that the executants had put his signature on the agreement under compulsion without knowing the contents thereof and the handwriting expert on the basis of photocopies of admitted documents had opinioned that the signature an agreement did’t tally with specimen signatures of the executants and the trial court, on proper appreciation of evidence, dismissed the suit but the High Court in appeal relied upon the untrustworthy, shaky and vague evidence to grant discretionary relief of specific performance in contravention of mandate of section 20 of Specific Relief Act, 1963. It has been held by Supreme Court in MALLIKARJUNA RAO (by LRS) & others Vs NALABOTHU PUNNAIAH (2013) 4 SCC 546 held that “ The handwriting experts opinion u/sec. 45 & 73 of the Evidence Act is a week evidence and court should slow to

base their findings solely on such opinion, but should apply their own mind and take a decision.

In ALAMGIR Vs STATE OF NCT, DELHI, ISCC 21 32 (J):- It is said hand writing experts opinion to be relied on when supported by other evidence. Though there is no rule of law without corroboration the opinion cannot accepted but due caution and care should be exercised and it should be accepted after prove and examination.

In **LALIT POPLI Vs CANARA BANK (AIR 2003 SC 1796) the apex court** has said "where there were some adverse remarks against the handwriting expert in some of past proceedings, but nothing could be shown as to how experts report suffered from any infirmity, then his evidence cannot be treated as totally irrelevant and no evidence on the basis of said adverse remarks. But in **J. KRISHNA Vs MALIRAM AGARWAL & OTHERS (AIR 2013 AP 107).** It is said that "The comparison of handwritings or signatures is not as science in making such comparison. It is only an art which has to be acquired by experience. In so far as Judicial Officers in state concerned, they are provided with the subject of introduction to comparison of signatures and hand writings during their basis induction course into subordinate judiciary after selection they are taken to several premier forensic and scientific institutions for practical experience."

Evidentiary Value of Expert Opinion:-

A court is not bound by the evidence of the experts which is to a large extent advisory in nature. The court must derive it over conclusion upon considering the opinion of the experts, which may be adduced by both sides cautiously and upon taking into consideration the authorities on the point on which he deposes.

The value of expert opinion rest on the fact on which it is based and his competency for forming a reliable opinion. The evidentiary value of the opinion of expert depends on the fact upon which it is based and all the validity of the process by which the conclusion is reached where the expert give no real data in support of their opinion, the evidence even though admissible may be excluded from consideration as affording no assistance in arriving at the correct value.

In **State Vs KANHU CHARAN BARIK 1983 Cr.LJ 133** "The evidence of experts after all is opinion evidence. The opinion is to be supported by reasons. The court has to evaluate the same like any other evidence. The reasons in support of the opinion. If convincing, make the opinion acceptable.

Appreciation of Expert Evidence in Criminal Cases:-

The general practice is that the judges will receive the opinion of an expert after checking his competency in Chief Examination, reserving the inquiry as to the grounds of opinion on cross examination.

Section 293 of Criminal Procedure Code 1873 says, Reports of certain Government scientific experts:- (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this code, may be adduced as evidence in any inquiry, trial or other proceeding under this code.

So that the legislative intention behind this provision is to give some privilege to the higher officials in Forensic Scientific Departments. This privilege is given considering their qualifications experience in their field. But this privilege is not given to the scientists engaged in private labouratories. By invoking section 293 of Cr.P.C court can admit any report under the hand of

(a) Any Chemical Examiner or Assistant Examiner
(b) The chief inspector of explosives
(c) The Director of finger prints Bureau.
(d) The Director or Deputy Director or Assistant Director of Central Forensic Science Labouratories or State Labouratories.
(e) The Director of Haffkeine institute
(f) The Serologist to the Government Bombay.

Thus through this section a very wide discretion has been given to the trial court in admitting scientific evidence. The courts are expected to use their power judicially without any abuse.

The Bombay High Court in PARWAT Vs SUK DEY (AIR 1956 Bom 617)

Said that “unless the expert stepped into the witness box, the opinion expressed by him in a communication to one of the parties could not be treated as evidence under the Evidence Act.

However it is not hard and fast rule and in ordinary circumstances court may admit the reports as permitted by Sec.293 of Cr.P.C. Exceptional circumstances arise when there is any difference of opinion in the reports, or where the guilt or innocence of the accused turns entirely on the result of the report or if the report seems meagre or cryptic by which court cannot act or absence of evidence connecting the incriminating articles seized etc. Thus the question of summoning the expert is based entirely on the nature and circumstances of the case. Judicial practice shows that normally court will insist that the report of a scientific expert must contain all relevant information required, including the reasons for arriving at a particular conclusion, the tests of experiments performed by him, the Factual data revealed by such tests or experiments and the ultimate reasons which led him to form his conclusion, so as to enable the court to arrive at its own independent decision.

There in STATE OF HIMACHAL PRADESHVs. JAILAL AIR 1999 SC 3318

The Supreme Court established the Specific proposition that scientific experts opinion not supported by any reasons will not be relied upon. And it further stated that " An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the judge with necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to from his independent judgment by the application of these criteria to the facts provided by the evidence of the case."

Corroboration – An additional requirement for admitting scientific expert Evidence

In our country, the precedent generally following by the courts in the case of the admissibility of scientific evidence is that the courts may normally require corroboration as a rule of caution as said by Supreme Court in RAM CHANDRA Vs STATE OF UTTAR PRADESH (AIR 1957 SC 381).

In order to corroborate Scientific Evidence, the evidence used for he corroboration must have some capacity to prove the fact in issue independently, other than the scientific evidence in the case. The tem independent corroboration denotes that the evidence used for the corroboration must be free from the influence of the scientific evidence.

The main reason for asking corroboration is that courts considered expert evidence as a weak type of evidence to base a conviction. Therefore, in almost all cases in which conviction has been based on expert evidence lacking other independent evidence, the Supreme Court has set aside the conviction. Thus in MAGAN BIHARILAL Vs. ST OF PUNJAB (AIR 1977 SC 1091) THE Supreme Court set aside the conviction confirmed by the Punjab and Haryana High Court. Thus in this case the Supreme Court has opined that there is a universal rule of law that it is unsafe to base conviction solely on expert opinion without substantial corroboration as a requirement for admitting scientific experts evidence.

However, the Supreme Court held that there is no rule of law or any rule of prudence, which has crystallized into a rule of law that the opinion of an expert must never be acted upon unless it is substantially corroborated. In order to substantiate their argument, court referred sections 45, 114 and section 3 of Indian Evidence Act.

After referring various decisions delivered by Supreme Court, it is to be concluded that after having regard to the imperfect nature of science as a rule of caution court can insist corroboration in appreciation of expert evidence to come to the judgment. But if the reasons for the opinion are convincing and if there is no reliable evidence throwing a doubt the uncorroborated testimony of an expert may be admitted.

In state of Maharastra Vs Sukhadeo Singh 9AIR 1992 SC 2100), the Supreme Court has rectified the same stand taken in MURALILAS'S case and held that the courts

may vary in placing implicit reliance on the opinion evidence. The court said " no hard and fast rule" could be laid down in this regard, but the court has to decide each case on its own merits, what weight it should attach to the opinion of experts. Thus a careful peer into the Indian rules regulating the admissibility of scientific evidence reveal that Indian Courts will normally ask corroboration. If there is any doubt in the reliability of such evidence.

This is an active safeguard against miscarriage of justice. Considering the following safeguards to be considered to ensure maximum output in evaluating it.

(1) Scientific evidence may be considered as evidence against the accused on the question of guilt or innocence, only if independent evidence either direct or circumstantial, has been introduced into evidence that corroborates the essential facts in order to justify the inference of its truth.

(2) A strict burden of proof principle must be adopted in the case of proving independent evidence. However, the independent evidence necessary to establish. Corroboration need not be sufficient of itself to establish beyond a reasonable doubt the facts by scientific evidence. The independent evidence need raise only an inference of the reliability of the scientific evidence the quality and quantity of such evidence will always depend on the complete satisfaction of the trail judge.

Some important cases or experts opinion:

1. S. GOPAL REDDY Vs. St. of AP (AIR 1996 SC 2181)
2. AMARSINGH RAMJIBHAI BAROT Vs. ST. OP GUJARAT (2005 (7) SEC.550)
3. MOHAN SINGH AND OTHERS Vs. ST. OF PUNJAB (AIR 1981 SC 1578).
4. ST. OF PUNJAB Vs. HAKAM SINGH (2005 175CC 408).
5. ANWARLAL HAG Vs. ST. OF UTTAR PRADESH (2005 105CC 581).
6. ST OF GUJRAT Vs. VINAY CHANDRA LAL PATHI AIR 1967 SC 778.
7. MOHD. AMAN AND OTHERS Vs. ST. OF RAJASTHAN AIR 1997 SC 2920.
8. MAHABIR PRASAD VERMA Vs. Dr. SURINDER KAUR (1982) 2 SCS 258.
9. ANVARUDDIN AND OTHERS Vs. SHAKOOR AND OTHERS AIR 1990 SC 1242.
10. ABDUL RAJAK MURIAZA DAFADAR Vs. St. OFMAHARASTRA (AIR 1970 SC 283).

CONCLUSION:-

It is made clear that the evidential value of scientific expert evidence should not be overestimated. Despite many arguments favouring scientific evidence in trials of the cases. The fact, which could be traced from the judicial prouncements, is that the forensic experts or prosecution in criminal cases in the court room often misuse it equally. An overview of the legal frame work governing scientific testimony gives an ultimate suggestion that forensic testimony cannot be considered as better than eye witness testimony and credibility battles.

Corroboration can be considered as an effective tool in checking the invasion of science into the legal system. No doubt, it will reduce the miscarriages of justice occurred in the judicial system through scientific evidence. However, it cannot be considered an effective standard in evaluating scientific evidence as a replacement for the standards like DAUBERT and FRYE what a court must be on its guards against is to take maximum pain in evaluating the scientific confronted them in order to avoid the freedom for the guilt and incarcenation for the innocent.

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