

(1925) 05 BOM CK 0004**Bombay High Court****Case No:** Case No. 22 of 1925

Emperor

APPELLANT

Vs

P.B. Ponde (No. 2)

RESPONDENT

Date of Decision: May 15, 1925**Acts Referred:**

- Evidence Act, 1872 - Section 47

Citation: (1925) 27 BOMLR 1031**Hon'ble Judges:** Crump, J**Bench:** Single Bench**Judgement**

Crump, J.

The witness Shankar Vaman Chaskar was called yesterday and has given his opinion as to whether the writing on certain documents is the writing of accused No 2. The question has been raised as to the relevancy of this opinion. The point has to be decided in the light of Section 47 of the Indian Evidence Act. Under that section when the Court has to form an opinion as to the person by whom any document is written or signed 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. It is necessary, therefore, to decide whether the witness is a person acquainted with the handwriting of accused No. 2.

2. The evidence of the witness is to the effect that he is a clerk employed in the English branch of the Household Department at Indore, and that all English papers in that office come into his charge for the purpose of being examined and filed. His duties are described by his designation, viz, " English Record Keeper, Household Department." It further appears that accused No. 2 is a " Mankari " or Court dignitary, and as such has official relations with the Household Department. The witness says that seven or eight documents purporting to be written by accused No. 2 have come into his charge to be examined and filed in the ordinary course of official business.

3. The explanation to Section 47 defines those persons who are said to be acquainted with the handwriting of another. There are three categories and it is obvious that on the facts the witness does not fall under either of the first two of these. The third category is described as follows : " When in the ordinary course of business documents purporting to be written by that person have been habitually submitted to him."

4. It is clear that the witness is a person to whom in the ordinary course of business documents purporting to be written by accused No. 2 have been submitted. To that extent he is in the position of the clerk "C" who figures in the illustration to the section, for C plainly does not fall under either of the first two categories. The question, therefore, turns on the meaning of the word "habitually" and the objection raised is based on that word alone. The argument in brief is that "habitually" connotes "frequency" and that in this case the instances are too few in number to fulfil the requirements of that word.

5. In my opinion the word "habitually" means "usually," "generally" or " according to custom" It does not refer to the frequency of the occasions but rather to the invariability of the practice. It would, for instance, be perfectly permissible to say "A habitually receives a letter from X once every year." If my view is correct the objection is not sustainable. I hold, therefore, that the opinion of Chaskar is relevant to prove the writing as to which he speaks. With the cogency of this evidence I am not concerned, for that is a question for the jury. I, therefore, overrule the objection and allow these documents to be read.