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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 3890/2011

VINOD & ORS

..... Petitioners

Through: Mr. B.K. Sharma, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Mukesh Gupta, APP with SI
Manish Kumar, PS Nand Nagri.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

24.11.2011

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Crl. M.A. No. 18350/2011 (Exemption)

Allowed, subject to all just exceptions.

Crl. M.C. No. 3890/2011 & Crl. M.A. No. 18349/2011 (Stay)

1. By this petition the Petitioners seek directions from this Court to send the original MLC on the record of the Trial Court in Case FIR No. 813/2005 under Section 342/323/302/201/34 IPC registered at PS Nand Nagri and the carbon copy of the MLC available in the hospital records to the handwriting expert. Learned counsel for the Petitioners contends that the two are required to be sent to the FSL to find out whether the carbon copy of the MLC was prepared correctly.

CRL.M.C. 3890/2011

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2. It may be noted that after the witnesses were examined as the accused was not given ample opportunity to cross-examine the witnesses, thus PW13 Dr. Parmeshwar Ram, CMO, GTB Hospital, Delhi was recalled for examination on an application moved under Section 311 Cr.P.C. In this regard it would be necessary to note down the testimony of PW13 Dr. Parmeshwar Ram recorded by the learned Trial Court on 30th September, 2011.

“PW-13: Dr. Parmeshwar Ram, CMO GTB Hospital, Delhi
(Recalled u/s 311 Cr.P.C.)

On SA

On 2.11.2005, I was posted as CMO at GTB Hospital, Delhi. On that day, I was posted on duty along with Dr. Gilley Bhutia in casualty. On that day, Dr. Gilley Bhutia had also examined the patient Uditman s/o Sh. Inderpal, 22 years male vide MLC No. 4822/2005 with the alleged history of assault during my duty hours apart from deceased Subodh. Dr. Gilley Bhutia has left the services of the hospital. I am well conversant with the handwriting and signature of Dr. Gilley Bhutia, as I have worked with him and seen him writing and signing during the usual course of my duties. The MLC is Ex. PW-13/B, is in the handwriting of Dr. Gilley Bhutia and bears his signatures at point A.

As per the MLC, there was swelling and tenderness on the left forearm. There was laceration approx. 2 cm over left parietal region. After examination, the patient was referred to surgery and ortho for further management. The patient had sustained blunt injuries.

XXX by Sh. B. K. Sharma, Advocate for accused Vinod Kumar.

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Court observation: There are three impressions on the summoned record of the MLC No. A-4821/05, out of which one is of the MLC No. A-4821/05, out of which one is of the MLC No. A-4821/05 of the deceased Subodh, and second is of MLC No. A-4820/05 and the third impression is having some particulars which not found preceding 10 MLCs. The MLC which is concerned with the present case when compared with its carbon copy brought, certain difference were noticed. In the middle of MLC words 2.11.2008- and 5.35 is not mentioned and at the bottom words PENDING INVESTIGATION are also not mentioned. There is cutting at the portion where words *dead body sent to mortuary, A/E is mentioned over to*. The second impression is not the MLC which is immediately previous to the MLC No. A-4821/05 which is at the portion where alleged h/o assault and one line below is mentioned. There is third impression with respect to some other case where the father's name is written as Mahesh Chand aged is written as 25 and brought by is written as Ct. Karan Pal 519/NE/PS Seemapuri, the address of the patient is also written as C-252, Old Seelampur, and it appears that the lighter impression is with respect to the MLC which is below the dark impression of this MLC in the entire MLC. However, the said particulars could not be found in ten preceding MLCs. The MLC which is immediately previous to this MLC is having time of 2.30 a.m. in the name of Ashok s/o Ram Babu, R/o H. No. 386, Phase-V, Karawal Nagar, Delhi and subsequent MLC is of Udit Mann and time of the same is 6.08 a.m. The reduced copy of the carbon MLC No. A-4821/05 is retained in the judicial file which is Ex. PW-13/A1 and original carbon copy which is in register is signed by court. The reduced copy of the carbon MLC No. A-4822/05 of patient is also retained in the judicial file which is Ex. PW-13/B1.

Court Q: The doctor is asked, can you explain the lighter impression of which MLC?

Ans.: I cannot say as I have not prepared the same.

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The word at place of timing is 5.35 and the digit '5' according to me is '5'. It is correct that digit '5' mentioned in other place is different. I cannot say the digit '2' is altered to make it as digit '5'.

Court observation: It appears that the in running hand while writing it was written as 2 but simultaneously it was changed to 5.

It is incorrect to suggest that this 5 has been made subsequently after writing 2 at the instance of some outsider agency.

XXX by Ch. Rajinder Singh, Advocate for accused Sandeep and Kapil.

I adopt above said cross-examination.

XXX by Sh. R.K. Sharma, Advocate for accused Rakesh.

I adopt above said cross-examination.

RO & AC

Sd/-
GURDEEP SINGH
ASJ-04/NE/KKD/30.09.2011."

3. The learned Trial Court while disposing of the application of the Petitioners for sending the MLC and its carbon copy to the CFSL for opinion vide order dated 11th November, 2011 has observed that:

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“12. This is the issue which Ld. Counsel wishes to raise that the court had itself opined that ‘2’ was written the same flow and made as ‘5’. Firstly, it is worthwhile to mention that the doctor who had prepared the report has left the services of the hospital and is not available and therefore the CMO who was on duty at the relevant time proved the same. Further this court has not compared the disputed handwriting with admitted handwriting. The opinion was merely given with respect to the one word which was seen on the MLC with naked eye and it appears to be in the same flow, which does not require any expert. Opinion is required only to compare the handwriting of one person with his admitted handwriting and disputed handwriting. Therefore, the argument of Ld. Counsel that this court has compared the handwriting is devoid of any merit. This Court has only seen one word and has opined that it is in the same flow. Therefore, it does not require any expert opinion.”

4. Learned counsel for the Petitioners contends that the discrepancy in the original MLC and the carbon copy of the MLC show that the entire prosecution case is vitiated. In the present case the report of the expert is not sought for comparison of the handwriting of the suspect with that on the questioned document. The contention of the Petitioner is that there is difference in MLC and the copy thereof available on Hospital record and that ‘2’ has been converted to ‘5’. No expert opinion is required for the same and the learned Trial Court can form an opinion thereon. Whether the prosecution stands vitiated on this count or not will be in the domain of the

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learned Trial Court on appreciation of evidence.

5. There is no dispute to the fact that the High Court can interfere even if an order is an interlocutory one in exercise of its inherent jurisdiction under Section 482 Cr.P.C. so as to secure the ends of justice or prevent causing of miscarriage of justice. However, this power has to be used sparingly with caution and circumspection whether the order impugned is palpably illegal or unjustified. This Court in exercise of its inherent jurisdiction will not sit as a Court of appeal in the absence of that remedy having been provided. In the facts and circumstances no case of exercise of jurisdiction under Section 482 Cr.P.C. is made out.

6. Needless to say that, what inference the learned Trial Court should draw in view of the discrepancies, is not for this Court to observe at this stage.

The petition and application are dismissed.


MUKTA GUPTA, J.

NOVEMBER 24, 2011
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