

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM No.M-16330 of 2014

Date of Decision: February 12, 2015

Sharwan Kumar

.... Petitioner

vs.

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Ashit Malik, Advocate for the petitioner.

Mr. Chetan Sharma, Asstt. Advocate General, Haryana.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Kuldip Singh J.(Oral)

Sharwan Kumar, who is accused in FIR No.67, dated 23.03.2013, under Sections 120-B, 498-A, 304-B and 302 of the Indian Penal Code, 1860, registered at Police Station Sadar Thanesar, District Kurukshetra and is facing trial in the Court of learned Addl. Sessions Judge, Kurukshetra, has filed this petition for quashing of order dated 26.04.2014 (Annexure P-4) passed by learned Addl. Sessions Judge, Kurukshetra, vide which the application filed by the accused for sending a video compact disk to the Central Forensic Science Laboratory, Madhuban for examination was dismissed.

Brief summary of the case is that Sunita wife of the petitioner was married to him three years before her death. A

daughter was born out from their wedlock. On 21/22.03.2012, at midnight Sunita suffered burn injuries. She was taken to the hospital and was medico legally examined by Dr. A.C. Nagpal on the same night at 00.15 a.m. She was conscious at that time. It is stated that she stated that she accidentally caught fire while preparing tea and her husband poured water to extinguish the fire. This version was recorded by the doctor on his mobile phone and transferred on the video compact disk. Seventeen questions put to Sunita by the doctor have been reproduced in the present petition.

It is stated that subsequently Sunita made her statement to the learned Judicial Magistrate 1st Class, Kurukshetra on 23.03.2012 at 11.10 a.m., in which she levelled allegations against the present petitioner, on the basis of which, the present FIR was registered. It is further stated that when Dr. A.C. Nagpal was examined as PW1, he admitted during cross-examination about the said video compact disk. The said video compact disk was played in the presence of Addl. Public Prosecutor, learned counsel of the complainant and defence counsel. Now, the statements of three defence witnesses have been recorded. The present petitioner has filed an application on 12.11.2012 for sending the said video compact disk to the Central Forensic Science Laboratory, Madhuban for reducing the version into black and white on the ground that the suggestion was given to PW1 Dr. A.C. Nagpal by the learned Public Prosecutor that the video compact disk played in the Court was not audible. The said application was declined.

I have heard learned counsel of the parties and have also carefully gone through the case file.

A perusal of the impugned order shows that when Dr. A.C. Nagpal was examined as PW1, this video compact disk was put to him. Learned Addl. Sessions Judge, Kurukshetra, while dismissing the application, has recorded that the doctor has not disclosed the fact of video compact disk before the police or the Magistrate. It is further found that the doctor has stated that the video was recorded on the mobile camera of a chemist boy and that the video compact disk was prepared by a boy, namely, Gulshan.

I am of the view that the evidentiary value of the video compact disk is not to be examined at the stage of leading evidence. The fact remains that the doctor had admitted about the video clip of the deceased being prepared by him in the mobile camera of his chemist boy when she was brought to the hospital and was questioned by the doctor. The evidentiary value of the video compact disk cannot be pre-judged. During cross-examination, the said video compact disk was put to the doctor and was even played in the Court. A suggestion was put to the doctor by prosecution that it is not audible.

I am of the view that the interest of justice requires that the contents of the said compact disk should be brought on file. The said video compact disk has already been exhibited as Ex.D1. The Courts exist to do justice, which is not governed by technicalities. The probable evidentiary value of the compact disk could not be pre-

judged at the time of deciding the application. It is defence of the accused and he should be given opportunity to prove the same. As such, the impugned order passed by the learned Addl. Sessions Judge, Kurukshetra is set aside and the application filed by the accused for sending the video compact disk (Ex.D1) to the Central Forensic Science Laboratory, Madhuban for reducing the version into black and white, is allowed.

The learned Addl. Sessions Judge, Kurukshetra is directed to send the said video compact disk (Ex.D1) to the Central Forensic Science Laboratory, Madhuban, along with the transcription of the statements as prepared by the defence for recording the version in question-answer form in black and white on a paper and submit the report accordingly. Needless to say that the expenses shall be borne by the accused. Thereafter, the accused shall also be entitled to examine any witness to prove the authenticity of said video compact disk.

The petition is accordingly allowed.

February 12, 2015
sarita

(KULDIP SINGH)
JUDGE