

**In the High Court of Punjab and Haryana at Chandigarh**

**CRR-1395 of 2012**

**Date of Decision: 15.01.2015**

**Dharampal Singh**

**---Petitioner**

**versus**

**Amarat Kaur**

**---Respondent**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

**Present: Mr. Harsh Aggarwal, Advocate  
for the petitioner**

**Mr. Arvind Rajotia, Advocate  
for the respondent.**

**\*\*\***

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporter or not?**
- 3. Whether the judgment should be reported in the Digest?**

**\*\*\***

**REKHA MITTAL, J.**

The present petition lays challenge to order dated 9.1.2012 passed by the Additional Sessions Judge (Fast Track Court) Hisar (Revisional Court) whereby the revision petition preferred by the respondent against order dated 3.10.2011 passed by the Judicial Magistrate, Hisar directing the respondents to file an affidavit was allowed and the order dated 3.10.2011 was set aside.

The petitioner initiated criminal proceedings by filing a private complaint for offence punishable under Sections 420, 468, 471, 472 read with Section 34 of the Indian Penal Code (in short "IPC") on the allegations

that the accused forged Will dated 11.8.1985 purported to be executed by Hara Singh, father of the complainant who was working as an Orderly/office Peon in District Courts, Hisar and passed away on 1.11.1985 while in active service. An application was filed by the complainant under Section 91 of the Code of Criminal Procedure (in short "Cr.P.C.") for issuance of directions to Amarat Kaur wife of Hara Singh to produce the original Will of Hara Singh. Amarat Kaur, arrayed as one of the accused in the complaint was directed by the Judicial Magistrate to file an affidavit in the court on 25.11.2011 to the effect that she is not in possession of any such Will. The order passed by the Judicial Magistrate calling upon the respondent to file an affidavit was challenged in revision which was allowed vide impugned order dated 9.1.2012.

Counsel for the petitioner would contend that the Judicial Magistrate merely directed the respondent to file an affidavit in support of her statement that she is not in possession of the Will in question but no such direction was issued by the court compelling the respondent to produce the document to be used against her in the criminal proceedings. It is further submitted that the revisional court committed a serious error in setting aside the order passed by the Judicial Magistrate.

Counsel for the respondent has supported the impugned order with the submissions that the accused has the right to maintain silence and no adverse inference can be drawn against her for failure to speak or produce any document. No accused can be called upon to produce any incriminating material against him/her for establishing his/her culpability.

I have heard counsel for the parties and perused the records.

The revisional court, on a detailed consideration of provisions of Article 20 of the Constitution of India and the judgments rendered by the Hon'ble Supreme Court of India, referred to in the impugned order, has rightly held that the accused cannot be directed to produce evidence against herself and, therefore, the order passed by the Magistrate directing the accused to file her affidavit in regard to custody of the alleged forged Will cannot be allowed to sustain. I do not find any error much less illegality in the impugned order as would call for intervention.

Dismissed.

**(REKHA MITTAL)**  
**JUDGE**

**15.01.2015**

PARAMJIT