

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-3098-2014
Date of decision:14.8.2015

Pawan

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Sunny Bhardwaj, Advocate for the petitioner.

Mr. Manoj Kumar Sangwan, DAG, Haryana.

Mr.Sandeep Thaken, Advocate for respondent No.2.

RAMESHWAR SINGH MALIK, J. (Oral)

The instant petition is directed against the order dated 23.9.2014 passed by the learned Additional Sessions Judge, Bhiwani, whereby an application, moved by the petitioner-accused for getting the handwriting and finger print of the prosecutrix compared on the basis of letter dated 17.5.2014, was dismissed.

Notice of motion was issued.

Shorn of detailed factual background of the case, it would be suffice to note that petitioner was facing criminal trial arising out of FIR No.79 dated 16.3.2013 registered under Sections 363, 366-A and 376 IPC and under Section 4 of the Protection of Children from Sexual Offences Act, 2012 ('POSCO Act' for short) at Police Station, Bound Kalan. During the course of trial, when the prosecution evidence was going on, the petitioner-accused moved the said application, which was dismissed by the learned trial Court vide impugned order dated 23.9.2014. Hence this criminal revision petition.

Learned counsel for the petitioner submits that the prosecutrix in her statement before the police under Section 161 Cr.P.C. as well as in her statement under Section 164 Cr.P.C. before the Magistrate has not supported the prosecution version. However, when she appeared before the Court, she took a somersault and deposed against the petitioner. During the course of trial, prosecutrix herself wrote a letter dated 17.5.2014 Mark 'DA' which is again in favour of the petitioner and in consonance with her statements recorded under Sections 161 and 164 Cr.P.C. This was the reason that petitioner moved the application for getting handwriting of the prosecutrix compared on the basis of said letter dated 17.5.2014. He further submits that since prosecution evidence was still going on, no prejudice was going to be caused to the prosecution, had the learned trial Court allowed the application of the petitioner. He also submits that serious prejudice has been caused to the petitioner, because of the impugned order. He prays for allowing the present petition.

On the other hand, learned counsel for the State submits that it was not the appropriate stage for the petitioner to move such application. He should have waited for the relevant prosecution evidence which was likely

to be produced before the court. Similarly learned counsel for the complainant also opposes the present petition, contending that learned trial Court committed no error of law, while passing the impugned order and the same deserves to be upheld.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the instant case, the present petition deserves to be allowed, for the following more than one reasons.

During the course of hearing, when a pointed question was put to the learned counsel for the respondents as to what prejudice was going to be caused either to the prosecution or complainant in allowing the application of the petitioner, they had no answer and rightly so, it being a matter of record. It is the settled proposition of law that accused must get full opportunity to defend himself. It is the basic principle of our criminal jurisprudence that hundreds of guilty men may be acquitted but not even one innocent person should be convicted. Petitioner was well justified, while moving this application before the learned trial Court. It was the appropriate stage for moving the said application because prosecution evidence was still going on. Since the learned trial Court has failed to appreciate this material aspect of the matter, while passing the impugned order, the same cannot be sustained.

Again, the learned Additional Sessions Judge has misdirected himself, while passing the impugned order, without appreciating the evidentiary value of the piece of evidence sought to be brought on record by the petitioner-accused. Once the prosecutrix has denied prosecution version

in her statement under Section 164 Cr.P.C. before the Magistrate and later on she backed out from her statement, while deposing before the court, the learned trial Court ought to have allowed the application of the petitioner, so as to enable him to get handwriting of the prosecutrix examined from the expert on the basis of her letter dated 17.5.2014. Having said that, this Court feels no hesitation to conclude that the impugned order passed by the learned trial Court has resulted in serious miscarriage of justice and the same cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted hereinabove, coupled with the reasons aforementioned, this Court is of the considered view that the present petition deserves to be allowed.

Consequently, the present petition is allowed. The impugned order dated 23.9.2014 passed by the learned Additional Sessions Judge, Bhiwani is hereby set aside. The application moved by the petitioner stands allowed. The learned trial Court is directed to get the handwriting of the prosecutrix examined from the Handwriting and Fingerprint Expert, on the basis of letter dated 17.5.2014 Mark 'DA' so as to grant full opportunity to the petitioner to defend himself.

Resultantly, with the above-said observations made and directions issued, the instant petition stands allowed, however, with no order as to costs.

14.8.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE