

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No. 3544 of 2014

Date of Decision : February 20, 2015

Pawan Kumar

.....Petitioner

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. U.K. Kanwar, Advocate

Ms. Manjari Nehru Kaul, Additional A.G., Punjab.

T.P.S. MANN, J.

The petitioner has filed the present revision petition for challenging the order dated 1.0.2014 passed by the trial Court whereby application filed by him for summoning the Chemical Examiner as a defence witness was dismissed.

The petitioner is facing the trial in FIR No.1 dated 3.1.2014 registered at Police Station Khuiyan Sarwar under Sections 363/366-A/376/34 IPC and Sections 3/4 of the Protection of Children from Sexual Offences Act. The trial proceeded against him and his co-accused Raj Kumar. The prosecution examined its witnesses and also tendered in evidence the report Ex.PX of the Chemical Examiner as per which, spermatozoa were detected on the vaginal swabs. After the conclusion of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. This was followed by the accused availing 11 opportunities for examining defence evidence. On 16.9.2014, i.e. after a lapse of two months when the case was first fixed for defence evidence, the petitioner filed the application under Section 293(2) Cr.P.C. for summoning the Chemical Examiner as a defence witness. The said application, however, has been dismissed by the trial Court by passing the impugned order.

The report of government scientific expert, who may be a Chemical Examiner or Assistant Chemical Examiner can be used as evidence in any enquiry, trial or other proceedings. Such a report can be brought in evidence without calling the expert. However, the Court may, if it thinks fit, summon and examine any such expert as to the subject matter of his report. In the present case, the trial Court has not found it appropriate to summon and examine the Chemical Examiner as to the subject matter of his report. On the other hand, it is the accused who wants to summon and examine the Chemical Examiner in regard to the subject matter of his report. On a query put by this Court, learned counsel for the petitioner could not state as to what questions are required to be put to the Chemical Examiner as to the subject matter of his report. It is only stated that the Chemical Examiner has given single line report stating the presence of spermatozoa and there is no mention as to the procedure adopted while analysing/examining the vaginal swabs. The report is also silent about the method of analysis/examination and, therefore, it is apparent that there was some foul play in the very preparation of the report.

The Chemical Examiner to whom the matter or thing duly submitted for examination or analysis is required to conduct necessary tests and upon completion of the analysis, to give a report. The petitioner has not been able to specify as to what procedure was required to be adopted by the Chemical Examiner while analysing the matter submitted to him for that purpose. Merely because the report Ex.PX is a single line report stating the presence of spermatozoa is no ground to hold that the said report is not in conformity with the prescribed procedure.

To be fair to the counsel for the petitioner, who has referred to the judgment in the case of Amrit Lal and others Vs. State of Haryana and others, 2007(2) RCR (Criminal) 408, it may be mentioned that the scientific expert can be summoned for cross-examination only if a genuine request is made by one of the parties. However, when the request made by the parties is found to be not genuine, the Court can decline to exercise discretion of summoning the scientific expert for cross-examination. In the present case, the petitioner has already availed more than 11 opportunities for concluding his evidence. Moreover, after the case was first fixed for defence evidence for 19.7.2014, the petitioner waited for about two months before filing the application for summoning the Chemical Examiner as a defence witness. Apparently, the only purpose sought to be achieved by the petitioner is to delay the trial itself. It may not be out of place to mention here that apart from filing the application under Section 293(2) Cr.P.C. for summoning the Chemical Examiner as a defence witness, the petitioner had moved a number of applications before the trial Court for one relief or the other but those applications were dismissed by the trial Court. The petitioner then challenged those orders by filing revision petitions, which have, however, been dismissed by this Court from time to time.

In view of the above, there is no merit in the revision and the same is, accordingly, dismissed.

February 20, 2015
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(T.P.S. MANN)
JUDGE