

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

Crl. Misc. No. M-1093 of 2014

Date of decision : 19.10.2016

Vishal

.....Petitioner

versus

State of Haryana and anr.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. J.S. Bedi, Sr. Advocate with
Mr. Gurbir Dhillon, Advocate
for the petitioner

Mr. Himmat Singh, DAG, Haryana

Mr. Rakesh Nehra, Advocate
for respondent No. 2

RITU BAHRI, J.

The present petition is directed against order dated 13.12.2013 passed by Court of learned Addl. Sessions Judge, Rohtak whereby the application of the petitioner for sending the handwriting of the prosecutrix to the FSL Madhuban has been dismissed.

Brief facts of the case are that F.I.R No. 5 dated 06.01.2008 under Sections 363-A/366 IPC has been registered against the petitioner at Police Station Shivaji colony at the instance of respondent No. 2 with the allegation that the petitioner had enticed his daughter and had also taken away Rs.12.45 lacs from the house (P-1). The prosecutrix remained with the petitioner between 06.01.2008 to 16.01.2008. She has not levelled the allegation of rape against the petitioner in her statement recorded under Sections 161 and 164 Cr.P.C. The report under Section 173(2) Cr.P.C has

been filed against Vishal, Vishnu, Sultan and Chhotu under Sections 363/366-A/376/511 IPC. The prosecutrix was examined in the Court where she improved her version and stated that the rape has been committed upon her. Her statement along with her cross examination and further cross examination is Annexure P-2 colly. Thereafter, an application under Section 216 Cr.P.C was filed for amendment of charges and addition of Section 376 IPC. The amended charge was framed on 11.03.2010, which was challenged by the petitioner by way of filing CRR No. 990 of 2010 and this Court stayed the re-examination of the witnesses vide order dated 30.03.2010 (P-4). The revision petition was dismissed on 05.10.2012 (P-5). There petitioner further cross examined the prosecutrix and certain other witnesses and also moved an application dated 03.12.2013 for sending documents (Mark A/letter written by prosecutrix and Mark D1/cash memo on which there is a writing of the prosecutrix) to the FSL, Madhuban for handwriting comparison, which was dismissed on 13.12.2013 on the ground that there is a delay in moving the application. Hence the present revision petition.

Learned counsel for the petitioner submits that the observation of the learned trial Court that there is a delay in moving the application by the petitioner for sending the handwriting of the prosecutrix to the FSL, is fallacious, as the petitioner felt the need to get the handwriting send for handwriting analysis only when the revision petition filed by the petitioner against the order amending charges, came to be dismissed. Further the learned trial Court cannot dismissed the application of the petitioner only on the ground that the prosecutrix was less than 16 years of age and therefore, no evidence needed to led to show consent.

Reference has been made to a judgment of this Court in a case of *Sunil Kumar vs. State of Haryana 2006(2) RCR Crl 15* wherein prosecution stated that her house was surrounded by other houses and she raised alarm but none had reached at the spot from the neighbourhood. No injury was found on her. Further a request was made to the Court for comparison of dispute handwritings/signatures of the letters written by the prosecutrix to accused with that of specimen handwriting of the prosecutrix, which was declined and the Judge gave his opinion that letters were not in hand of prosecutrix and convicted the accused. This Court set aside conviction and held that there is no legal bar to the judge using his eyes but he (judge) should hesitate to base his finding with regard to identity of handwriting solely on comparison made by him.

Reference has further been made to judgment of this Court in a case of *Sant Guru Ram Rahim Singh vs. C.B.I and connected case, 2015 (1) RCR (Crl) 316* whereby this Court held that it is necessary for Court to record reasons. The rejection of the application without giving any reason whatever is unfair as it would amount to denial of fair opportunity to either party. The purpose and object of the provision is to enable the court to determine the truth to reach to a just decision after discovering all relevant facts.

Heard.

In the present case, it would be seen at the final stage, whether the prosecutrix was 16 years of age or not. Moreover, on 02.09.2008, when the prosecutrix was examined in the Court, she was put letter mark-A and she refused to have written this letter and then on the same day she have her handwriting in the Court. She was again cross examined on 31.05.2013 and

photocopy of the receipt i.e mark D-1 was put to her in her cross examination on which word “chhotu” has been written to which she also declined to have been written by her.

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Kalyani Bhaskar v. M.S. Sampooranam, 2007(1) RCR (CrI) 311*** wherein a complaint was registered by the respondent with regard to dishonor of cheque. However, the accused filed an application under Section 245 Cr.P.C that the cheque was not issued by him, which was dismissed on the ground that the genuineness of the signature could be questioned only at the time of trial of complaint. Hon'ble the Supreme Court allowed the appeal and held in para 11 as under:-

Section 243 (2) is clear that a Magistrate holding an inquiry under the Cr.P.C. in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a hand-writing expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the hand-writing expert has deprived the appellant

of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 Cr.P.C. without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243(2) Cr.P.C. refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque, in question, for the opinion of the hand-writing expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable.

Applying the ratio of the above mentioned judgments.

GAURAV ARORA
2016.10.25 15:08
I attest to the accuracy and
integrity of this document

the present petition is allowed and order dated 13.12.2013 passed by Court of learned Addl. Sessions Judge, Rohtak is quashed. The learned Addl. Sessions Judge, Rohtak is directed to send the documents i.e Mark A/letter written by prosecutrix and Mark D1/cash memo to FSL Madhuban for comparison/expert opinion for ascertaining whether these documents were written by the prosecutrix or not and shall proceed with the trial of the case in accordance with law.

19.10.2016
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No