

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M No. 19651 of 2016 (O&M)

Date of decision : October 18, 2016

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Sandeep Verma

.....Petitioner

Versus

State of Haryana and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. A.K Walia, Advocate for the petitioner.

Mr. D.R Singla, DAG, Haryana.

Mr. Rakesh Gupta, Advocate for respondent no.2.

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RITU BAHRI, J.

Crl. M. No. 32845 of 2016

Prayer made in the application is allowed.

Documents along with the rejoinder are taken on record.

CRM-M No. 19651 of 2016

The petitioner is seeking quashing of the order dated 29.4.2016 (Annexure P-4) passed by Additional Sessions Judge, Kaithal vide which bailable warrants of the petitioner had been issued as well as the order dated 21.5.2016 (Annexure P-6) passed by the Additional Sessions Judge, Kaithal, whereby the application dated 13.5.2016 (Annexure P-5) praying

for cancellation of the bailable warrants which were issued vide order dated 29.4.2016 (Annexure P-4) was declined.

Heard counsel for the parties.

The Supreme Court vide order dated 24.11.2015 (Annexure P-3) had allowed an SLP (CrI.) No. 9151 of 2015 against order dated 25.8.2015 passed by this Court whereby order dated 21.2.2015 passed by the Special Judge, Kaithal in Sessions Case No.33 of 2014 was affirmed and the application of the accused for getting exhibited the compact disc filed in defence and to get the same proved from Forensic Science Laboratory was rejected.

Briefly stated, the facts of the case are that on 25.10.2013, FIR No. 232 has been registered against respondent no.2 at Police Station Civil Lines Kaithal in respect of offence punishable under Section 354 of the Indian Penal Code and one relating to Protection of Children from Sexual Offences Act, 2015 (POCSO) on a complaint made by Munish Verma alleging that his minor niece was molested by the respondent-accused. On 28.3.2014, charges were framed in respect of offences punishable under Sections 354-A and 376 IPC and also in respect of offence punishable under Sections 4/12 of POCSO. After examining the prosecution witnesses, statement of the accused was recorded under Section 313 Cr.P.C. In defence the accused examined four witnesses and moved an application dated 19.2.2015 under Section 294 Cr.P.C alleging that there was recording of conversation between Sandeep Verma (father of the victim) and Saurabh (Son of the accused) and Meena Kumari (wife of the accused). This application was rejected vide order dated 21.2.2015 and the same was affirmed by this Court. In an SLP filed against this order, Hon'ble the

Supreme Court held that *compact disc is a document and had also observed that under Section 294 Cr.P.C, that it is not necessary for Court to obtain admission or denial on a document under sub Section 1 of Section 294 Cr.P.C personally from accused or complainant or the witness. The endorsement of admission or denial made by the counsel for defence on the document filed by the prosecution or on the application/report with which same is filed is sufficient compliance of Section 294 Cr.P.C. Similarly on the document filed by defence, endorsement of admission or denial by the public prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved and can be read in evidence.*

The Supreme Court further observed that the prosecution witnesses, including the child victim, her mother Harjinder Kaur, maternal grandmother Parajit Kaur and Munish Verma have been examined. Father of the victim Sandeep Verma was discharged by the prosecution and the evidence was closed. The accused in his statement recorded under Section 313 Cr.P.C alleged that there was some conversation in possession of his son. The defence examined Dhir Singh, Registration Clerk, Vipin Taneja, Document Writer, Praveen Kumar Clerk-cum-Cashier, State Bank of Patiala and Saurabh Verma son of the respondent-accused. **Hon'ble the Supreme Court further observed that the Courts below erred in law in rejecting the application to play the compact disc in question to enable the public prosecutor to admit or deny and to get it sent to the Forensic Science Laboratory by the defence.** The SLP was allowed and the orders passed by the Courts below were set aside. Resultantly, the application dated 19.2.2015 was allowed.

The grievance of the counsel for the petitioner is that he could not be summoned by the trial Court to get his voice samples recorded in terms of the order dated 24.11.2015 (Annexure P-3) passed by Hon'ble the Supreme Court and further sending the same for examination in Forensic Science Laboratory, Madhuban. Hon'ble the Supreme Court had merely allowed the SLP to get the compact disc admitted/denied .

This argument of the counsel for the petitioner is liable to be rejected as the order passed by Hon'ble the Supreme Court is very clear that even if the public prosecutor had denied or admitted the compact disc, the defence had a right to send it to the Forensic Science Laboratory and for this purpose the voice of the petitioner is necessary. The order dated 21.5.2016 (Annexure P-6) passed by the Additional Sessions Judge, Kaithal is in terms of the order dated 24.11.2015 (Annexure P-3) passed by Hon'ble the Supreme Court as in the original application (P-1) prayer was made to get the compact disc operated initially in the Court for preserving a copy of text contained therein for further communication to FSL, Madhuban for establishing there authenticity. This application has been allowed by Hon'ble the Supreme Court and the direction to get away his voice sample does not require any interference.

In view of all that has been discussed above, Crl. Misc is dismissed. Petitioner is directed to appear before the trial Court on the next date and give his voice samples.

October 18, 2016

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(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No