

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

**Crl. Misc. No.M-719 of 2016
Date of decision : 31.08.2016**

Shinder Singh @ Shinda

.....Petitioner(s)

Versus

State of U.T. Chandigarh

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. A.D.S. Sukhija, Advocate
for the petitioner.

Mr. Sukant Gupta, Addl. P.P. U.T., Chandigarh.

ANITA CHAUDHRY, J.

Rupinder Kaur Aulakh, mother of the complainant and the petitioner is facing trial in FIR No.8 dated 10.01.2015, registered under Sections 354-A, 323, 506, 292, 120-B IPC, Section 12 of POCSO Act and Section 66-A of the I.T. Act, Police Station Sector 17, Chandigarh.

The trial had started and the statement of the prosecutrix was being recorded when an application (Annexure P-4) was moved by the accused (petitioner) for making appropriate order to retrieve the data from the laptop in the possession of the victim. The petitioner in his application pleaded that PW-1 had made a statement that she had downloaded and had prepared a DVD on her laptop and she could produce the same and the laptop was produced in the Court and the accused had produced the Expert

in the Court and it was found that the data had been deleted and the explanation given by the victim was that she had got her laptop repaired and therefore, the data had been deleted. The accused wanted that the hard-disk of the laptop should be got examined from an Expert and therefore the laptop of the victim should be sent to CFSL, Sector 36, Chandigarh.

The trial Court dismissed the application. The concluding paragraph reads as under:-

“8. Keeping in view the ingredients of the aforesaid Sections as well as the allegations levelled by the complainant in her complaint and keeping in view her deposition on oath recorded till today, I come to the conclusion that data retrieving of the Laptop regarding the messages is not of vital value in this case. The complainant has submitted in her complaint that she also got some record pertaining to SMS of her mother and said Surinder Sing in which they were exchanging very hurting and unexpected messages from their mobile nos. 9781270777, 8427218877, 9855670777, 8427918877 and in two- three messages it was specifically mentioned that her mother should allure her so that she may also indulge in such activities with him. Similarly in her deposition on oath the complainant-prosecutrix has deposed that it on 26 of September 2014, rupinder Kaur had gone to the market by leaving her mobile phone on charging mode in the house. She checked her phone and found many unexpected chats between Rupinder Kaur and Surinder Singh and in one of such chat it was mentioned that come with red label and bring Mehar i.e. herself to Chail. Thereafter she took out snapshots of all those chats and transmitted the same in a computer and then took out the print in her pen drive. She has already

supplied the complete copies of pen drive to the learned defence counsel. Therefore, I do not find any merit in the arguments advanced by learned counsel appearing on behalf of the applicant-accused that the Laptop be sent to CFSL, Sector 36 Chandigarh for the retrieving of data from the hard disc of the Laptop regarding messages. Moreover the CFSL report regarding the mobile phone is already on file. I am convinced with the arguments advanced by learned SPP for the State along with learned counsel for the complainant that the present application has been filed by the applicant-accused just to cause the delay in the proceedings of the present case. Hence, the application is dismissed.”

It would be necessary to first refer to the allegations made by the victim. The complainant is a Honours student in a college in Chandigarh. She had levelled allegations against her mother who is alleged to be in a relationship with her (mother sister's husband) Massad namely Surinder Singh, the present petitioner. In her complaint she had mentioned that her mother in connivance with her brother in law had driven her to insanity and her father had to leave the house and Surinder Singh started mis-behaving with her. The complainant was alone at her home when Surinder Singh came to the complainant's house and handed a DVD carrying a video of her mother and threatened to make it public if she did not make physical relations with him. The DVD was enclosed along with the complaint. The complainant had further alleged that she found some SMS exchanged between her mother and Surinder Singh which hurt her. The mobile numbers on which the messages were exchanged were also given in the FIR. The complainant confronted her mother with the DVD. Instead of consoling the

mother she started beating her and accused her of defaming them. In the meantime, the brother of the complainant entered the house came to her rescue. The complainant called her father and he called the police. The complainant suffered internal injuries on the neck and back. The matter was reported and it led to the registration of the FIR.

Counsel for the petitioner contends that the accused is entitled to defend himself and the police had failed to collect the primary evidence and did not make any investigation as to what was the source of the DVD and they have a right to get the laptop checked from an Expert to find out as to whether the statement given by the complainant was correct and since the prosecutrix had agreed to get it examined from the Expert and had brought the laptop in the Court but later she backed out and the prosecution should have no objection and they are duty bound to get all the evidence so as to reach at the truth and to do complete justice.

The complainant side as well as the State counsel has pointed out that limited notice was given to the State only on the maintainability of the petition. It was urged that the petitioner is wanting to turn the course of the trial which cannot be allowed. It was urged that the DVD that was handed over to the police was sent to the Forensic Science Laboratory and the report has been received and it was found that it was not tampered with and the petitioner had stopped appearing in the Court and they had now learnt that he had been convicted in another case and production warrants have been issued. It was urged that to delay the trial and to pressurize the prosecutrix, they have moved a transfer application levelling serious allegations against the Officer before whom the trial is going on and the

accused are yet to complete their cross-examination. Reliance was placed upon *Union Carbide Corporation etc. Vs. Union of India etc. AIR 1992 SC 248*.

The counsel for the petitioner was asked to place on record the statement of the victim. The same has been placed on record.

The petitioner was asked to refer to the provision under which the application had been moved in the midst of the trial. The counsel for the petitioner had urged that the evidence was necessary to arrive at the complete truth.

The counsel had addressed on the maintainability of the petition but was unable to refer to the provision under which the application had been filed. The accused cannot decide the course of the trial. The object of the defence by filing the application is to stifle the prosecution. The accused has no right nor could they demand that the trial be conducted in the manner he wanted. Its the prosecution who has to prove its case. The accused cannot be allowed to take the administration of criminal justice out of the hands of the Court and place it in his own hands. If there is any lacuna, the defence can always take benefit of it at the appropriate stage but the course of the trial cannot be changed. There is no infirmity in the order. The petition is not maintainable and is dismissed.

31.08.2016
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No