

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

CRR No.1210 OF 2017 (O&M)
DATE OF DECISION : 29th MARCH, 2017

Sukhdev Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

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Present : Mr. Rajesh Kapila, Advocate with
 Ms. Himani Kapila, Advocate for the petitioner.

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A. B. CHAUDHARI, J. (ORAL)

Heard learned counsel for the petitioner.

Notice of motion.

Mr. R. S. Randhawa, Additional Advocate General, Punjab
accepts notice on behalf of the State.

Learned counsel for the petitioner has tendered a copy of application dated 20.02.2017 which was for seeking direction from the Court to both the accused to admit or deny the voice recorded in the DVD in a criminal case arising out of FIR No.119 dated 21.05.2015, registered under Sections 302 and 34 IPC at P.S. Sadar Ferozepur. This application was submitted by the complainant-Sukhdev Singh petitioner in the trial Court through his private counsel Sh. R. K. Kapila and the application shows at the bottom the following words "through APP". The trial Court has, however, at the commencement of the impugned order stated that the application was moved by the learned Prosecutor for the State, which does not appear to be correct since it was moved by the complainant through his private Advocate.

This Court has found that in the Sessions trial in serious offences like murder etc., as in the present case, such type of applications like the one under Sections 319 and 311 Cr.P.C. etc. are directly filed by the complainant through its counsel before the trial Court and sometimes there is endorsement by APP on such applications. In the light of the scheme of the Criminal Procedure Code, I think this practice is contemplated at all. But it is seen that such applications, filed by the complainant, are also entertained by the trial Court and decided without the State prosecutor actually applying by making any application or applying his mind.

The anxiety of this Court is that the procedure provided by Criminal Procedure Code should not be given go by as there is definite object of appointments of the Public Prosecutors for conducting prosecution before the trial Courts. In my opinion, therefore, the provisions of the Criminal Procedure Code should be followed in letter and spirit.

In the light of the above observations I think the Director of Prosecution, Government of Punjab will have to clarify on affidavit about the above state of affairs that are going on in the Sessions Courts at the behest of the Public Prosecutors representing the State. At the same time, the interest of the complainant/victim, if the required job is not being done by the prosecution agency, must be protected but then left in the hands of the State through its Public Prosecutors. The issue is somewhat serious and this Court expects the Director Prosecution to file the affidavit on a deep consideration and in the light of the provisions of the Criminal Procedure Code. The affidavit shall be filed on or before 07.04.2017. The hearing on the above issue shall take place on 19.04.2017.

Turning back to the present matter, this Court find that the trial Court rightly declined the relief sought by the complainant as the trial Court could not have granted such a relief in the fact situation. During the course of hearing, the learned counsel for the petitioner realized that in the absence of voice sample test, scientific test etc. on record, no such application claiming directions to the accused to admit or deny their voice, can be made.

In that view of the matter, I think if the complainant/prosecution has any evidence the petitioner should be allowed to have a chance to take recourse to the remedy. For that reason therefore, the application dated 20.02.2017 filed by the petitioner before trial Court that was rejected vide impugned order is allowed to be withdrawn and consequently the order made on that application on 14.03.2017 by the trial Court is also set aside. Liberty is reserved in favour of the petitioner to avail of the appropriate remedy if available in law for filing the fresh application by following the proper procedure in the matter.

Disposed of accordingly.

The matter be put up on 19.04.2017 at 2.00pm for further hearing.

Copy of this order be supplied to the learned State counsel for compliance.

29th MARCH, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No