

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

**CRR No. 3334 of 2017(O&M)
Date of Decision: 07.10.2017**

Manjeet

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Akashdeep Singh, Advocate
for the petitioner.

Mr. Ramesh Kumar, AAG, Haryana.

Mr. Bijender Dhankar, Advocate
for respondent no.2.

LISA GILL, J(Oral).

Petitioner is aggrieved of order dated 21.08.2017, passed by the learned Additional Sessions Judge, Jhajjar, whereby application under Section 73 of the Indian Evidence Act (for short 'the Evidence Act'), seeking sample/specimen of the handwriting of the victim for comparison with the writing on the letter Mark-D1 (wrongly mentioned as Mark D-A in the petition) has been dismissed.

Brief facts relevant for adjudication of the controversy are that FIR No. 172 dated 15.03.2015, under Sections 354-D, 506 IPC (Annexure-P-1) was registered on the statement of the mother of the victim alleging that the present petitioner used to trouble the complainant's daughter. The petitioner along with 3-4 other boys even tried to kidnap her daughter. When, they sought to take action against the petitioner, he along with his parents apologized in front of the Panchayat and assured that he would not

trouble the complainant's daughter. The apology was given in writing. However, the petitioner along with a group of 5-6 boys alongwith him started following the victim when she used to go to school. He threatened the victim that she should go along with him otherwise he would take her away forcibly. It became difficult for the victim to take her exams of 10+2. A mobile phone was thrown in the complainant's home on 24.02.2015 by the petitioner telling the complainant's daughter that she could talk to him on the said phone. The victim abused the petitioner asking him to take back the phone, on which he threatened the victim that he would forcibly abduct her. A complaint was lodged about the conduct of the petitioner with his parents, however, they retorted with anger and even threatened to beat up the complainant and her family. It is further stated that due to such harassment, the victim became perturbed and it was apprehended by the parents that she may commit suicide any time. Therefore, action against the petitioner was prayed for.

Statement of the victim was recorded before the learned trial Court on 19.11.2015. Thereafter, an application under Section 311 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') as well as two applications under Section 73 of the Evidence Act, one for preserving the call details of the mobile phone and another seeking the specimen signatures/handwriting of the victim for comparing the handwriting on letter Mark-D-1 were preferred by the accused-petitioner. Application under Section 73 of the Evidence Act for preserving the call details was allowed and application under Section 311 Cr.P.C. was withdrawn. Thereafter, fresh application under Section 311 Cr.P.C. for the same relief was filed. The said application under Section 311 Cr.P.C. for recalling the witness (victim) was dismissed on 09.05.2016 by the learned trial Court. The said order was

upheld by this Court on 28.08.2016 in Criminal Revision No. 2912 of 2016. Application for preserving the call detail records of the mobile phone was allowed on 09.05.2016 itself.

Application under Section 73 of the Evidence Act seeking specimen signatures/handwriting of the victim was ultimately dismissed vide impugned order dated 21.08.2017.

Learned counsel for the petitioner while referring to Section 67 and 73 of the Evidence Act, submits that the victim has denied having written such a letter therefore in this situation, it is necessary to prove her handwriting. Furthermore, learned trial Court has erred in considering the evidentiary value of the letter Mark D-1, at this stage. Therefore, this petition be allowed.

Learned counsel for the respondent while refuting the said averments submits that the impugned order has been rightly passed. The trial is at the final stage. Statement of the petitioner under Section 313 Cr.P.C., has been recorded on 18.09.2017 and the matter is listed for final arguments on 23.10.2017. The petitioner is merely trying to prolong the proceedings. Dismissal of the application under Section 311 Cr.P.C., for recalling of the victim is not in dispute. Moreover, the victim in this case it is submitted was a minor at the time of the alleged occurrence. Therefore, even if, for the sake of arguments, it is accepted that the handwriting on the letter mark D-1 is found to be that of the victim, it would not be of no avail to the petitioner in this situation. Therefore, it is prayed that this petition be dismissed.

I have heard learned counsel for the parties and have carefully gone through the file with their able assistance.

The factual position regarding filing of two applications under Section 73 of the Evidence Act, one for preserving of the call details record

of the mobile phones as well as the application for specimen signatures/sample handwriting for comparison with the handwriting on letter Mark D-1; besides the application under Section 311 Cr.P.C., for recalling of the victim, is not in dispute. It is a matter of record that the application under Section 311 Cr.P.C. stands dismissed by the learned trial Court and the said decision was upheld by this Court on 22.08.2016 in Criminal Revision No. 2912 of 2016. It is specifically observed in order dated 22.08.2016 that:-

“I find no merit in the revision. A witness cannot be called in to fill up the lacuna. A perusal of the cross-examination effected on PW-5 shows that suggestions had been made that the prosecutrix used to write letters to the accused which had been denied. The prosecutrix was also confronted with a letter Mark-D which had been denied. It appears that the accused under the disguise of the provisions contained under Section 311 Cr.P.C. only wants a retrial, which cannot be allowed.”

The present application seeking the sample handwriting of the victim for comparison was dismissed vide impugned order dated 21.08.2017 by the learned Additional Sessions Judge, Jhajjar, while observing that the letter Mark D-1 does not reflect that it was ever addressed by the victim to the petitioner. Reference to Section 67 of the Evidence Act, is of no avail to the petitioner in the factual matrix of the case. The contention of learned counsel for the petitioner that mere pendency of the present application while the application under Section 311 Cr.P.C. was dismissed cannot work to the detriment of the petitioner is equally untenable. It is fairly admitted that the trial in this case is at its final stage. Statement of the petitioner under Section 313 Cr.P.C. stands recorded.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 21.08.2017,

passed by the learned Additional Sessions Judge, Jhajjar, which calls for interference by this Court in exercise of jurisdiction under Section 482 Cr.P.C.

Accordingly, this petition is dismissed.

07.10.2017
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No