

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. M-10452 of 2018
Date of Decision: 24.4.2018**

Maninder Singh and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. K.S.Chahal, Advocate
for the petitioners.

ANITA CHAUDHRY, J

The petitioners are seeking quashing of the order dated 27.3.2017 (Annexure P-8) vide which the Additional Sessions Judge dismissed the application filed by them seeking recall of the expert witness for further cross-examination.

The petitioners are facing trial in a case registered under Sections 306, 304-B, 34 IPC on account of death of Puja. The prosecution relied upon a suicide note which during investigation was sent to the Forensic Science Laboratory in Punjab. Dr. Ashwani Kalia, Assistant Director, FSL appeared to prove his report. His statement was recorded on 5.5.2016. The witness was cross-examined at length. An application was moved on 18.5.2016 for recall of the witness for further cross-examination pleading that since he was an expert witness and only a hand writing expert could cross-examine him properly. It was pleaded that the witness had not

examined all the letters, vowels and the total hand writing of the diary with the suicide note and a different procedure had been adopted by him which had resulted in great prejudice and therefore they may be allowed to cross-examine the witness by a hand writing expert.

The trial Court after seeking reply of the prosecution dismissed the application holding that an elaborate cross-examination was effected and no material question had been detailed which was not put to the witness and the prejudice caused to the accused had not been spelt out nor it was detailed how the expert had adopted a different procedure.

Aggrieved by the order, the petitioners have approached this Court and seek recall of the witness for further cross-examination.

I have heard the counsel for the petitioners.

Counsel for the petitioners contends that they had been greatly prejudiced as the witness was an expert and they had come to know about a letter Annexure P-9 which is an admission by this very witness that he was not fully qualified to give opinions and they want to put this document to him. Counsel further submits that they had moved an application under the RTI Act but had received no reply and the opinion given by the witness is not of an expert and he has to be confronted with these letters. It was urged that a case under the Corruption Act had been registered against the Assistant Director and therefore it is necessary to confront him with the letters. Reliance was placed upon ***Harpreet Singh versus State of Punjab 1999(4) RCR (Criminal) 746, Rajiv Sood versus State of Punjab 2016 (1) R.C.R. (Criminal) 67, P. Sanjeeva Rao versus State of A.P. 2012(3) R.C.R. (Criminal) 653*** and judgment passed by this Court in ***Raj Kumar versus Gurdial Singh*** CRM-M-44211-2015 decided on 25.8.2015.

I have gone through the authorities referred to by the petitioners.

In the application filed before the Court below, the petitioners had claimed that they could not cross-examine the hand writing expert properly and wanted the cross-examination to be done by an expert as he had adopted his own procedure while examining the hand writing which had resulted in prejudice. The trial Court had dealt with the issue and petitioners had been unable to explain as to what was the different procedure adopted by the hand writing expert. The petitioners have come up with altogether different reasons for recall of the witness. Counsel for the petitioners had referred to Annexure P-9 said to be a letter written by the hand writing expert in 2004. The counsel had stated that this officer had expressed his inability to examine the case as he was not acquainted with the formalities and needed training to examine the documents.

The argument made by the petitioners lacks merits. This letter had been written by the Scientific Officer in 2004 as he had joined that department only on 20.2.2004. The letter was written in March 2004 and prior to this he was working in the different divisions and had dealt with the cases for DNA and fingerprinting and had sought permission of his seniors to be given training so that he could give his opinion on the cases involving hand writing.

So far as the second issue raised by the petitioners that a corruption case was registered against the Assistant Director is concerned, the petitioners can lead evidence in defence and prove the letter of 2004 and the FIR if any. Recall of the witness is not necessary. The additional grounds were not even raised before the Court below and is an afterthought.

I find no merit in the petition and is dismissed in *limine*.

(ANITA CHAUDHRY)
JUDGE

April 24, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No