

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

114

CRM-M-296-2018

Date of decision: 09.01.2018

Ajay @ Avinash

...PETITIONER

VERSUS

State of Haryana and another

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Dr. Anand Kumar Bishnoi, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court assailing the order dated 05.12.2017 (Annexure P-1) passed by the Additional Sessions Judge, Rewari, whereby an application moved by the prosecution under Section 53 read with Section 53A of the Code of Criminal Procedure for taking the sample of the hair of the petitioner, who is an accused and facing trial, for further comparison/matching of hairs, which have already been recovered and are exhibits, found to be of human origin, for DNA analysis to FSL (H), Madhuban, has been allowed, which is challenged by the petitioner on the ground that the application, which has been moved by the prosecution, is not maintainable under Section 53 read with Section 53A of the Code of Criminal Procedure and further that the Court has wrongly applied the

provisions of Section 311 Cr. P.C.

It is the contention of the learned counsel for the petitioner that the applicability of the provisions as far as Sections 53 and 53A Cr. P.C. is concerned, is for a specific purpose, which purpose has been defined under those provisions and, therefore, the Court could not have gone beyond the same. Even if such a resort has to be made, that should have been made by exercising powers under Section 173 (8) Cr. P.C. This would have given an opportunity to the petitioner to get all the documents and the supplementary challan, if any, presented by the prosecution. By virtue of the impugned order, the petitioner would be deprived of that opportunity of being provided the said documents leading to the denial of right of fair trial to the petitioner. He, therefore, prays that the impugned order deserves to be set aside.

I have considered the submissions made by the counsel for the petitioner and have gone through the impugned order but do not find myself in agreement with the contentions, as have been raised by the counsel for the petitioner.

No doubt, an application under Section 53 read with Section 53A of the Cr. P.C. has been filed but when read along with the provisions of Section 311 Cr. P.C. and further enabling provisions especially with the intent to find out the real truth with regard to the case, which is pending and to do justice, the Court can, in such circumstances, proceed to pass an order which would fairly enhance the purpose, for which the Courts have been created i.e. to do justice. The motto of the Court is to find out the truth and truth must prevail. In any case, the Code of Criminal Procedure only lays down the procedure, which is a broad outline of the powers of the Court and

enabling it for the purpose, for which the Statute has been enacted i.e. for finding out the truth.

In the facts and circumstances of the present case, where offence is of commission of a murder, where as per the exhibits, hair from the deceased as well as the other hair have been found from the wrist and Investigation Agency wants to find out the real truth with regard to the persons, who were present along with the deceased, the said application has been moved. The Court has rightly proceeded to pass a detailed order while giving reasons as to why the said application is being allowed keeping in view the intent and purpose of the provisions, as contained in Section 53 read with Section 53A Cr. P.C. along with Section 311 Cr. P.C. When the purpose, for which a Statute has been enacted, stands to be achieved, such an order passed by the Court cannot be set aside especially when learned counsel for the petitioner has not been able to point out any provisions under the Statute which would bar such an order, which has been passed by the trial Court.

The present petition, therefore, being devoid of merits stands dismissed.

January 09, 2018

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No