

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

**CRM-M No. 33823 of 2017 (O&M)
Date of Decision: January 23, 2018**

Simran

..Petitioner(s)

Versus

State of Haryana and another

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ramesh Malik, Advocate
for the petitioner.

Mr. Arun Kumar, AAG, Haryana.

Mr. B.S. Saroha, Advocate
for respondent no.2.

ANITA CHAUDHRY, J.

The petitioner/complainant is aggrieved by the order dated 29.08.2017 (Annexure P-2) as the application filed under Section 311 Cr.P.C. seeking to summon the Senior Scientific Officer of the Forensic Science Laboratory, Madhuban (Haryana) had been dismissed.

The petitioner had lodged a complaint, upon which FIR No.16 was registered under Section 313, 323, 342, 376(2)(N), 511, 34 IPC. The police during investigation had taken the samples for DNA examination. The report of the DNA has been received and was tendered in evidence.

The complainant moved an application for summoning

Dr. Rajeev Kawatra, Senior Scientific Officer of the Forensic Science Laboratory, Madhuban (Haryana) as an additional witness and the plea is that the DNA report was not clear and therefore, the examination of the Expert was necessary.

The trial Court dismissed the application. Para 5 of the order reads as under:-

“5. After hearing the contentions raised by learned Public Prosecutor for the State assisted by learned counsel for the complainant and learned defence counsel, this court is of considered view that through this application, the applicant/complainant wants to summon Dr. Rajeev Kawatra to prove DNA report which has already been exhibited as Ex.P40. The Hon'ble apex Court has held in case titled as State of Himachal Pradesh Vs. Mast Ram 2004(8) SCC 60 that a junior Scientific Officer is an officer enshrined under Section 293(4) of Criminal Procedure Code. In this case DNA report has been given by Senior Scientific Officer which has already been exhibited by learned Public Prosecutor. In these circumstances when the report is admissible in evidence and has already been exhibited, no purpose shall be served by calling the doctor especially when no clear reason has been mentioned in the application why evidence of the witness is essential for just decision of the case. In these circumstances this court is of the considered view that the instant application has been filed just to prolong the proceedings. Hence, finding no merit the application stands dismissed.

The counsel for the petitioner submits that Section 311

Cr.P.C. enables the Court to summon any person as a witness and the application should have been allowed. The counsel also refers to Section 362 Cr.P.C. to urge that a witness can be summoned before the judgment is passed and the additional evidence is normally allowed and it was necessary to test the statement of the Expert by way of cross-examination and the reasons for giving that report as the allegations levelled by the petitioner against respondent no.2 were that the accused had raped her against her wishes and she had conceived and the accused thereafter administered her a pill terminating the pregnancy.

The counsel appearing for respondent no.2 urges that the Apex Court has held that the Expert's should not be called to the Court and the documents/reports should be accepted as valid evidence without examining the author of the document.

Section 293 Cr.P.C. reads as under:-

293. Reports of certain Government scientific experts.

- (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.*
- (2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.*
- (3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.*
- (4) This section applies to the following Government scientific experts, namely:-*

- (a) any Chemical Examiner or Assistant Chemical Examiner to Government;*
(b) the Chief Inspector of- Explosives;
(c) the Director of the Finger Print Bureau;
(d) the Director, Haffkeine Institute, Bombay;
(e) the Director , Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;
(f) the Serologist to the Government.

The powers under Section 311 Cr.P.C. are invoked in a totally different situation. In the present case, the issue is whether the Director/Assistant Director of a Forensic Science Laboratory should be summoned to prove his report. The report has already been tendered in evidence. The complainant has not given any specific reasoning as to why she wants to summon him. The trial Court in its wisdom did not consider it necessary to summon the Expert to prove the report. The prosecution has already tendered the report Ex. P-40 and it is noted in the order.

I find no infirmity in the order. The petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

January 23, 2018
Sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No