

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

**CRR No. 1879 of 2018(O&M)
Date of Decision: 28.05.2018**

Hasina

..... Petitioners

Versus

State of Haryana and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: MrVivek Sakhun, Advocate
for the petitioner.

LISA GILL, J(Oral).

CRM-20037 of 2018

Annexure P-1, is taken on record subject to just exceptions.

Exemption in filing certified copy thereof, is granted.

Application is disposed of.

CRR No. 1879 of 2018

Petitioner is aggrieved of order dated 14.05.2018 passed by learned Additional Sessions Judge, Karnal, vide which application under Section 311 Cr.P.C., seeking comparison of recording of CD (Ex.MO/1) with the voice of the accused has been dismissed.

Brief facts necessary for the adjudication of the case are that FIR No. 17 dated 04.02.2017 was registered at the instance of the complainant with the allegations that her daughter's marriage was performed sixteen (16) years prior to the registration of the FIR. Accused, who is none other but the son-in-law of the petitioner is alleged to have committed rape upon the prosecutrix (the petitioner-his mother-in-law) in the year 2008. Various other allegations have been raised in the FIR.

An application under Section 311 Cr.P.C., was moved on

21.02.2018 seeking voice sample of the accused and for comparison of the same with the voice of Audio CD (Ex.MO/1). It is submitted that the Audio CD (Ex.MO/1) is in respect to the conversation recorded between the accused and his own wife i.e. daughter of the prosecutrix on the mobile phone of the other daughter of the prosecutrix. The accused is alleged to have confessed to his crime in the said Audio recording. It was thus prayed that the voice sample of the accused be collected and be sent to F.S.L., Madhuban alongwith the CD for comparison.

Learned trial Court on considering the facts and circumstances of the case dismissed the application vide impugned order dated 14.05.2018.

Aggrieved therefrom this petition has been filed.

Learned counsel for the petitioner has vehemently argued that the said audio recording (Ex.MO/1) is a vital piece of evidence showing the culpability of the petitioner, therefore, the same must be subjected to forensic examination. However, it is not denied that the mobile phone on which the conversation was recorded was never tendered in evidence. The wife of the accused i.e. one of the daughters of the prosecutrix is not even arrayed as a party. Learned counsel for the petitioner at the time of arguments has informed that an application for summoning the wife of the accused as a witness was moved after passing of the impugned order dated 14.05.2018. The said application, it is informed has since been dismissed. Learned counsel for the petitioner fairly states that the matter is listed for final arguments today before the learned trial Court.

Heard learned counsel for the petitioner at length.

It is not in dispute that daughter of the prosecutrix i.e. wife of the accused is not even arrayed as a witness. An application admittedly moved in this respect after passing of the impugned order stands dismissed.

Moreover, complaint-Ex.P-11 was received in the office of Superintendent of Police, Karnal, on 05.01.2017, on the basis of which the present FIR was registered in February 2017. The prosecutrix in her statement under Section 164 Cr.P.C., recorded on 06.02.2017 (Ex.P-13), never mentioned about the recording of any such extra-judicial confession of the accused on the mobile phone of the prosecutrix's daughter. Learned trial Court has rightly observed as under:-

“8. The CD (Ex.MO/1) allegedly containing the extra-judicial confession of the accused suffered by him during his conversation with his wife Shabnam was produced before the police by Aarjoo, daughter of the prosecutrix and sister-in-law/wife's sister of the accused on 05.02.2017. The mobile phone, wherein the conversation was allegedly recorded by Shabnam, sister of PW-5 Aarjoo, has not been there on the judicial record and until and unless the primary evidence containing the disputed voice of the accused is produced before the Court, no useful purpose would be served by collecting the voice sample of the accused for the comparison thereof with his disputed voice contained in the CD (Ex.MO/1).

9. PW5 Aarjo has categorically stated during her testimony that the said recording was done by her sister Shabnam in her mobile phone. Shabnam, wife of the accused, is not cited as a prosecution witness. The complainant is being represented by an independent counsel since the startling of this case but the present application was never moved prior to the recording of the statement of the accused under Section 313 (1) (b) Cr.P.C. after the prosecution evidence stood concluded. In such circumstances, the Court is of the view that the application under consideration has been moved just to delay the decision of the case. The proposed evidence can in no way be termed as a material evidence in view of the above said peculiar circumstances of this case.”

Learned counsel for the petitioner is unable to point out any

infirmity, illegality or perversity in the impugned order dated 14.05.2018, which calls for interference by this Court in exercise of its revisional jurisdiction.

Accordingly, this petition is dismissed.

It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

28.05.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No