

Rajan Vs State of Haryana

Present: None.

During the course of hearing of the main petition i.e. CRM-M-15268-2017 a question had arisen as to whether test identification parade and dying declaration should be recorded by some Special Executive Magistrate.

Vide order dated 30.10.2017, the petition was disposed of by passing the following order, wherein the matter was left open to the State to take necessary steps in this regard. The relevant extract from order dated 30.10.2017 reads as follows:-

“Learned counsel for the State makes a statement that the process regarding the appointment of Magistrate for recording of dying declaration as well as for conducting of T.I. Parade in accordance with the relevant rules i.e. Punjab and Haryana High Court Rules and Orders, is under re-consideration of the Government.

Since the matter relates to the legislative function, nevertheless to smoothen the process of recording of dying declaration as well as T.I. Parade, this Court expects the Punjab and Haryana Government and U.T., Chandigarh to take early steps for doing the needful.

Disposed of.”

Thereafter, a letter dated 3.4.2018 was received from the Additional Chief Secretary to Government, Haryana, Home Department, wherein while referring to provisions of High Court Rules and Orders, which provides for a dying declaration and test identification parade to be conducted by a Judicial Magistrate, it was requested that requisite amendment may be carried out in the High Court Rules and Orders.

Pursuant to order dated 23.4.2018, the matter has now been examined by a Rule Committee (other than CPC), wherein the issue has been set at rest. The decision taken by Hon'ble Rule Committee (other than CPC), vide resolution dated 10.10.2018, reads as follows:-

“The Committee has considered the matter and has also perused the judgment passed by the Hon'ble Division Bench in Criminal Appeal No.D-216-DB of 2008 titled as “Sukhvinder alias Shoki and others versus State of Haryana”, wherein it has been categorically held by the Hon'ble Division Bench as under:-

“59. The Test Identification Parade can be made use of by the investigating agency to make sure that the suspect was the real accused. The witness who had seen the accused at the time of occurrence can also ascertain the fact whether the suspect was the real person who committed the crime. When such is the importance of Test Identification Parade, it is not permissible to delegate the function of conducting Test Identification Parade by Judicial Magistrate to an Executive Magistrate. Further, as we have pointed out, Punjab and Haryana High Court Rules and Orders incorporated in Vol-III Chapter 2 Part C mandates holding of the identification parade only by the Judicial Magistrate. Henceforth, the Judicial Magistrates himself shall, without delegating such a function, hold the Test Identification Parade.”

In view of the same, the committee does not suggest any change in rules with regard to conducting of Test Identification Parade. Similarly, in case of recording of dying declaration, the principle of separation of power are required to be adhered. The recording of dying declaration is a sacrosanct function and the same cannot be delegated. The basis and analogy as in case of Test Identification Parade is also application to recording of dying declaration.

Since, the matter has already been considered by the Hon'ble Division Bench on judicial side, the Committee resolves that no change is required to be recommended in Chapters 11-C and 13-A of rules and Orders of Punjab and Haryana High Court, Volume-III. The concerned government be informed accordingly.

Accordingly, you are hereby informed that in terms of judgment passed by the Hon'ble Division Bench in Criminal Appeal No.D-216-DB of 2008 titled as "Sukhvinder alias Shoki and others versus State of Haryana" no change is required to be made in Chapters 11-C and 13-A of Rules and Orders of Punjab and Haryana High Court, Volume-III"

The aforesaid resolution has already been conveyed to the Additional Chief Secretary, Government of Haryana.

Since it has been resolved that the rules do not require any change pertaining to the provisions for recording dying declaration and for conducting test identification parade by a Judicial Magistrate, therefore, no further direction is required to be issued in the matter.

The IOIN stands disposed of accordingly.

15.12.2018
pankaj

(Gurvinder Singh Gill)
Judge