

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

**AT CHANDIGARH**

**Criminal Revision No.2515 of 2019 (O&M)**

**Date of Decision: 05.12.2019**

Mandeep Singh

...Petitioner (s)

Versus

Punjab and Haryana High Court and another

...Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA**

Present:- Mr. Vijay Lath, Advocate  
for the petitioner.

Mr. Rajeev Anand, Advocate  
for respondent no.1.

Mr. Rajiv Vij, Addl.P.P., UT, Chandigarh.

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**HARI PAL VERMA, J. (Oral)**

The petitioner - Mandeep Singh has filed the present revision petition challenging the order dated 22.08.2019 passed by Chief Judicial Magistrate, Chandigarh, whereby the applications filed by the petitioner along with co-accused Manisha Wagle, seeking comparison of their standard hand writing/signatures on the affidavit with their signatures on power of attorney filed before this Court in CRM-M-41239-2018, has been dismissed.

Briefly stated, the petitioner along with co-accused Manisha Wagle had approached this Court by way of CRM-M-41239-2018 titled as **Manisha Wagle and another Vs. State of Punjab and others** so as to seek protection at the hands of respondents no.4 to 6/private respondents, (as referred to in that petition), on the ground that they had performed marriage against the wishes of parents of Manisha Wagle. This Court vide order dated 18.09.2018 dismissed the said petition. In the said petition, the petitioner had projected himself to be unmarried though claimed major. However, when the said petition was taken up for hearing, Ms. Manjit Kaur, the first wife of the present petitioner appeared before this Court during the course of hearing along with her child and submitted that she is the legally wedded wife of the petitioner Mandeep Singh and a child was born from this wedlock. She also produced certain photographs in support of their marriage. However, when the petitioner was confronted with this fact, that he was already married and had a son from his earlier marriage, he denied the fact of his marriage with Ms. Manjit Kaur and a child from that marriage. This Court, while considering the fact that the petitioners- therein i.e. Mandeep Singh and Manisha Wagle had filed a petition with wrong averments and also furnished false affidavit in support thereof, directed them to be taken in custody and also directed learned Registrar (Vigilance) of this Court to register a criminal case against them and also to conduct an enquiry against them under Sections 340 CrPC read with Section 195 CrPC. Resultantly, the matter came up for hearing before Chief Judicial Magistrate, Chandigarh, in which charges were framed against the petitioner on 04.01.2019 and after recording the after-charge

evidence led by the prosecution, the petitioner-accused was examined under Section 313 CrPC. Thereafter, the case was fixed for defence evidence. During the pending proceedings at the defence, the petitioner moved an application for sending their joint affidavit Ex.CW-1/K to the Central Forensic Science Laboratory, Chandigarh for comparison of standard handwriting/signatures of the accused-applicant on the said affidavit with the power of attorney filed before this Court in CRM-M-41239-2018. However, the said application was dismissed by learned Chief Judicial Magistrate, Chandigarh vide order dated 22.08.2019, giving cause of action to the petitioner to file the instant revision petition against the impugned order.

Counsel for the petitioner has referred to provisions of Sections 243 and 247 CrPC to contend that once the prosecution evidence is over after getting the statement of the accused recorded under Section 313 CrPC, a legal right is accrued to the accused to lead his defence evidence. In support of the aforesaid contention, he has referred to judgment of Apex Court in the case of **Kalyani Baskar Vs. M.S. Sampooranam 2007(1) RCR (Criminal) 311.** Para 11 of the said judgment read as under:-

*“11. Section 243 (2) is clear that a Magistrate holding an inquiry under the Cr.P.C. in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a hand-writing expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach*

*his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the hand-writing expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 Cr.P.C. without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243(2) Cr.P.C. refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque, in question, for the opinion of the hand-writing expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable.*

Reliance has also been placed on judgment of Madras High Court in the case of **P.R. Ramakrishnan Vs. P. Govindarajan 2008(1) RCR (Criminal) 33** to contend that in proceedings under Section 138 of the Negotiable Instruments Act, 1881 when a cheque is dishonoured and the accused, who is being prosecuted, disputes his signatures on the cheque, in that case, the Magistrate may direct to send the disputed cheque for comparison with the admitted signatures of the accused to a handwriting expert. He submits that the legal right of the accused, so as to seek comparison of documents allegedly signed by him, needs to be extended in view of Sections 243 read with Section 247 CrPC. He has also relied upon judgment of Apex Court in the case of **Ronald Wood Mathams and others Vs. State of West Bengal** AIR 1954 SC 455.

Learned counsel for the petitioner further submits that no prejudice is going to be caused to the prosecution in case an opportunity is granted to the accused to get the affidavit, so attached with the main petition i.e. CRM-M-41239-2018 filed before this Court, compared with their admitted signatures on power of attorney. He further states that the petitioner shall not cause any delay the proceedings in any manner, as he is not likely to gain anything by prolonging the proceedings in the case, for the reason that he is already in custody in the case.

Learned counsel for respondents no.1 and 2 have argued that the very purpose of the petitioner to file such an application is an attempt to delay the proceedings. It is not the case of the petitioner that he is disowning the filing of the petition i.e. CRM-M-41239-2018 before this Court. In any case, if the petitioner is so aggrieved with the conduct of his

conducting counsel, the petitioner can avail the disciplinary remedies as available to him under law, but instead of invoking such remedies, the petitioner has preferred to file such an application. The petitioner never disowned the affidavit while appearing before the Enquiry Officer, who submitted his report, which led to filing of present complaint under Sections 340 CrPC read with Section 195 CrPC against the petitioner. The petitioner has not made any such allegation while appearing before the Enquiry Officer. Thus, he never disputed his signatures on the affidavit and power of attorney attached with the CRM-M-41239-2018.

I have heard learned counsel for the parties.

The provisions of Sections 243 and 247 CrPC read as under:-

***“243. Evidence for defence.***

*(1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.*

*(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross- examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:*

*Provided that, when the accused has cross- examined or had the opportunity of cross- examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.*

*(3) The Magistrate may, before summoning any witness on an application under sub- section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.”*

xx                      xx                      xx                      xx                      xx

***“247. Evidence for defence.***

*The accused shall then be called upon to enter upon his defence and produce his evidence; and the provisions of section 243 shall apply to the case.”*

The petitioner is an accused in the case in hand. In all fairness, provisions of Sections 247 CrPC gives a right to the accused to enter upon his defence and produce his evidence in consonance with the provisions of Section 243 CrPC. Section 243(2) empowers the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination or production of any document or other thing and the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing. However, in the case in hand, it cannot be termed that the petitioner-accused is delaying the proceedings, as he is already in custody. Rather, delay would cause harm to the petitioner, being in custody. In view of judgment of Apex Court in the case of **Kalyani Baskar** (*supra*), especially while referring to paragraph 11 of the said judgment, reproduced above, this Court finds that the impugned order deserves to be set aside. The petitioner-accused is vested with a legal right to lead his defence and conjoint reading of Section 247 CrPC read with Section 243(2) CrPC vests such right to accused. The

accused is equally entitled to adduce his evidence in support of his defence, which is a valuable right. In case such right to lead his defence is denied to the accused, it would lead to denial of fair trial.

Accordingly, the present petition is allowed and the petitioner is granted an opportunity to get the affidavit in question compared with their standard handwriting/signatures by a hand writing expert in accordance with law.

However, merely because the petitioner has been granted an opportunity to get the affidavit in question compared with their standard handwriting/signatures by a hand writing expert, will not give an extra mileage to him and the trial Court shall be well within its powers to decide the case on the basis of other evidences as available on record.

Needless to say that the observations made hereinabove shall not be construed as an expression on the merits of the case.

December 05, 2019  
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( HARI PAL VERMA )  
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No