

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-44115-2017 (O&M)
Date of decision: 13.01.2020

Daljeet Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. A.S. Sekhon, Advocate
for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of the order dated 08.11.2017 passed by the Judge, Special Court, Faridkot, dismissing the application filed by the petitioner-accused under Section 233 (3) Cr.P.C. for examination of a hand-writing expert in defence evidence to prove that the signatures of PW5 SI Shinderpal Singh are fake.

On 20.11.2017, following order was passed by this Court: -

“...Counsel for the petitioner submits that when this witness was examined as PW5, he has signed in the Court and the petitioner has moved an application for the examination of his signatures/handwriting on memo Ex.P1, Special Report

Ex.PW3/A, application for inventory Ex.PW5/A, ruqa Ex.PB and endorsement Ex.PE/1 with the signatures appended by this witness in the Court. Counsel for the petitioner further submits that right to lead defence evidence is important right to plead the innocence of an accused person and the trial Court has dismissed the application only on the ground that the same will delay the proceedings of the trial and the petitioner despite availing 11 opportunities, had not led any defence evidence. Counsel for the petitioner has relied upon the interim orders passed by the trial Court to show that he has already examined three defence witnesses.

Notice of motion for 12.02.2018.

In the meantime, trial Court is directed to adjourn the case beyond the date fixed in this case.”

Learned counsel for the petitioner submits that while leading the defence evidence, the petitioner got the signatures of PW5 SI Shinderpal Singh examined with a private hand-writing expert and as per opinion given by the hand-writing expert, the signatures did not tally and therefore, the petitioner sought the report with regard to ruqa Ex.PB, special report under Section 57 Cr.P.C. Ex.PW/A and application for inventory Ex.PW5/A, which was moved for approval of the inventory, prepared by PW5 SI Shinderpal Singh. It is further submitted that as per report of the hand-writing expert Sanjeev Sharma, the questioned signature did not tally with the standard signature of this witness and therefore, in his defence, the petitioner has

moved an application for granting permission to examine Sanjeev Sharma, the hand-writing expert, who had prepared the report dated 07.09.2018. It is also submitted that the only reason for dismissing application of the petitioner is that when the cross-examination of PW5 SI Shinderpal Singh was done, no suggestion was given to him that his signature on ruqa Ex.PB, special report Ex.PW3/A do not tally with the memo Ex.P1 and the application Ex.PW5/A.

Learned counsel for the petitioner further submits that at that stage, the petitioner had no expert opinion with regard to difference or variations in the signatures of this witness and therefore, no such suggestion could be given and since the case is now fixed for recording his defence evidence, the trial Court has taken very harsh view in declining his application for grant of permission to examine the hand-writing expert, as right of defence given to a suspect/accused person to prove his innocence, is an important right. Learned counsel has relied upon **Fazal Khan Vs. State of (NCT) of Delhi, 2014 (1) CCR 336**, wherein the Hon'ble Supreme Court has held as under: -

“That apart, denial of an opportunity to lead defence evidence can lead to gross miscarriage of justice. Even assuming that in a given situation, an accused especially one charged with a capital offence, makes a statement under Section 313 Cr.P.C. that he does not wish to lead evidence in defence but subsequently, realises the mistake and wishes to produce such evidence, the prayer for summoning such evidence cannot be summarily rejected. The trial Court would in such cases do well

to examine whether the prayer, no matter belated, was mala fide intended to prolong and delay the conclusion of the trial. There is no gainsaying that the right of the accused to lead evidence in defence is a valuable right not only because of demands of fairness and justice that must permeate the judicial determination of his guilt or innocence but one that is recognized under Section 233 (3) Cr.P.C. Such an invaluable right cannot be scuttled simply because of an accused making a statement under Section 313 Cr.P.C. declining at that stage to lead evidence.”

The Hon’ble Supreme Court in similar circumstances has allowed the application for grant of permission to lead defence evidence.

Learned State counsel has, however, opposed the prayer on the ground that during cross-examination of this witness, no such suggestion was given that his signatures differ on documents prepared by him during investigation.

After hearing learned counsel for the parties and going through the record and also in view of judgment of the Hon’ble Supreme Court in **Fazal Khan’s** case (supra), I am of the opinion that the petitioner, while leading the defence evidence, has a right to prove his innocence and in case, he wants to lead the evidence that signature of PW5 SI Shinderpal Singh do not tally with the ruqa Ex.PB and the special report Ex.PW3/A with the memo Ex.P1 and the application for inventory filed by this witness Ex.PW5/A, the same cannot be declined, as it goes to root of the case and admissibility and

authenticity of the disputed documents is to be seen at the time of final disposal.

Accordingly, this petition is allowed and the impugned order dated 08.11.2017 passed by the Judge, Special Court, Faridkot, is set aside. The petitioner is permitted to examine Sanjeev Sharma, a private hand-writing expert as a witness in his defence.

13.01.2020
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No