

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

CRM-M-26008-2021

Date of Decision: 19.07.2021

Sukhjinder Singh @ Sunny

.....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. R.K. Handa, Advocate, for the petitioner.

Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab,
for the respondent.

HARNARESH SINGH GILL, J.

Case is taken up for hearing through video conferencing.

Short reply filed by way of an affidavit of Assistant Commissioner of Police, Emergency Response System, Amritsar, is taken on record.

The petitioner lays challenge to the order dated 08.06.2021 passed by the learned Judicial Magistrate, Ist Class, Faridkot, whereby an application moved by the petitioner objecting to the comparison of the handwriting samples of the petitioner with those present on the alleged posters, with a consequential prayer to discard the request of the prosecution for comparison of the handwriting samples of the petitioner, was dismissed.

Learned counsel appearing for the petitioner has laid a great emphasis on the investigation conducted by the previous

agency i.e. the Central Bureau of Investigation in the matter and thus, submitted that the investigation conducted by such Agency still holds good and the same must be taken into consideration by the now Constituted SIT. He has taken a leaf out of the judgment passed by a Single Bench of this Court in CRM-M-19785-2020- Sukhjinder Singh @ Sunny Vs. State of Punjab and another decided on 04.01.2021, wherein the State of Punjab, had given a clear undertaking that the investigation conducted by the CBI, shall be taken into consideration by the SIT.

While stretching the aforesaid argument, Mr. Handa, has contended that it is an undisputed fact that earlier the handwriting samples of the petitioner obtained by the CBI and sent for comparison with those present on the incriminating posters, to the CFSL, Delhi, did not match. Having already ordained such course, it is not open to the prosecution to repeat the same course of action. He would, accordingly, submit that such process would amount to re-investigation, which the prosecution legally is not allowed to do so and what the prosecution could do in the matter, is only to further investigate the matter. He has placed reliance upon the judgments of the Hon'ble Apex Court in Ram Chaudhary Vs. State of Bihar, 2009(2) RCR (Criminal) 570 and SLP (Criminal) No. 593 of 1998 - K. Chandrasekhar and others Vs. State of Kerala, 1998(2) RCR (Criminal) 719.

Mr. Handa has further argued that even if the petitioner gave his consent earlier on 01.06.2021 to send his handwriting samples for comparison, the same would hold no validity, as there can be no estoppels against law. The earlier consent given in the police custody, would not only be hit by the provisions of the Evidence Act, but the same would be no consent in view of the fact that the matter cannot be reinvestigated by the SIT. In other words, it is submitted that under the guise of further investigation, the SIT cannot be allowed to do a de-novo investigation.

On the other hand, Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab, while emphatically piercing through the aforesaid arguments raised by Mr. Handa, would state that it is not the case of the petitioner that he had not given his consent as recorded in the order dated 01.06.2021 passed by the learned Magistrate and more so at that time, the petitioner was accompanied by his counsel. Thus, at best, if aggrieved, the petitioner could have challenged the said order, but it was not done so.

Still further, while not dithering from the earlier stand of the State of Punjab in the previous round of litigation as regards the same subject matter, it is contended that the earlier investigation conducted by the CBI, is only persuasive in nature and not binding upon the SIT and any undertaking given before the Court, would not restrain the prosecution from collecting further evidence. Hence, the petitioner has got no lawful right to

press his plea to mandatorily take into consideration the previous report of the CFSL as regards his handwriting samples.

Still further, it is submitted that taking the plea of the petitioner as regards previous investigation as tenable, though for the sake of arguments, even then said undertaking had been given by the State of Punjab in the proceedings arising out of FIR No. 63 dated 02.06.2015 under Sections 380, 295-A IPC and not FIR No. 117 dated 25.09.2015 under Sections 295-A, 506, 120-B IPC, as admittedly, the petitioner had been arrested on 31.05.2021 in this case, which is much after the decision of this Court in CRM-M-19785-2020 on 04.01.2021, arising out of FIR 63 dated 02.06.2015. Hence, even from the said angle, the pleas raised by the petitioner merit rejection.

It is further submitted that the prosecution agency is bound to collect the evidence so as to reach a logical conclusion and that there cannot be any prohibition or restraint against the Investigating Agency from collecting such evidence. Mr. Dhuriwala has further submitted that the necessity to obtain the handwriting samples of the petitioner again has arisen in view of the fact that earlier samples had not been taken properly, inasmuch as, the earlier samples were not taken according to the set procedure and were not taken with 'Marker' as the said posters were found to be written with 'Black Marker'.

Lastly, it is contended that it could not be shown as to what prejudice of any kind has been done to the rights of the petitioner. The trial of any criminal proceedings, is to be well

founded on the basis of evidence and the case being at the stage of investigation, it is not open to the petitioner to create obstacles in the said process.

I have heard the learned counsel for the parties.

Indisputably, the handwriting samples of the petitioner had been obtained by the prosecution agency after the petitioner had given his consent in the presence of his counsel. The statement of the petitioner was also recorded by the learned Magistrate on 01.06.2021, which would read as under:-

“Statement of accused Sukhjinder Singh @ Sunny along with counsel V.K. Monga, Advocate.

Stated that I am ready to give my specimen writing. I request for comparison of my specimen writing with the alleged original posters which are bearing the stamps of Forensic Science Laboratory and these posters may also be marked by this Hon’ble Court.”

Similarly, the aforesaid factual position stands noticed in the order dated 01.06.2021 passed by the learned Magistrate, which would read as under:-

“...Sukhjinder Singh, who was produced in the Court duly identified by his counsel Sh. V.K. Monga, Advocate, suffered statement that he is ready to give his specimen writing for comparison (sic be compared) with the alleged original posters which are bearing the stamps of Forensic Science Laboratory and these posters are also marked by this Court. Original Posters shown in the Court by the IO.....”

Likewise, the relevant extracts from the order dated 08.06.2021 passed by the learned Magistrate, would read as under:-

“.....In the opinion of this Court, it appears that present application/objections has been filed just for the sake of filing it. So far as the contention of the learned counsel for the applicant that CBI has already got compared the specimen handwriting of accused Sukhjinder Singh alias Sunny with those on the alleged posters is concerned, this Court is of the view that the simple perusal of the order dated 04.01.2021 passed by the Hon’ble Punjab and Haryana High Court reveals that the Hon’ble High Court has discarded the closure report filed by the CBI before Special Magistrate CBI Court, Mohali and that closure report was never accepted by the Court. So far as the investigation conducted by the CBI during their course of investigation is concerned, the Hon’ble High Court has directed the SIT to take into consideration the investigation conducted by CBI before 06.09.2018 and all the proceedings done by the CBI after 06.09.2018 have been categorically declared as non-est by the Hon’ble Punjab & Haryana High Court. Moreover, in the opinion of the Court, any act done during the course of the investigation by CBI is not binding upon the SIT which has been constituted upon by the Punjab Police for conducting further investigation in the case. Further, even if the applicant/accused Sukhjinder Singh alias Sunny wanted to object to the application for giving specimen handwriting, he should have objected on 01.06.2021, when the said application was moved. Once the said application has been allowed with the consent of the accused and in the presence of learned counsel for the accused, the applicant has got no locus standi to raise objection

The aforesaid position is not disputed by Mr. Handa, learned counsel for the petitioner. What is argued by him is that there cannot be any estoppels against law. However, I do not find any merit in the said submission.

No case law could be referred to by Mr. Handa in support of his aforesaid submission nor could he point out any statutory provisions to this effect. The judgments of the Hon'ble Supreme Court in Ram Chaudhary's and K. Chandrasekhar's cases (supra), only relate to the further investigation and its scope. However, the same do not deal with the situation emerging in the present case. As argued by Mr. Dhuriwala, learned State Counsel, Mr. Handa could not show as to what prejudice is caused to the rights of the petitioner by objecting to obtaining of his handwriting samples and sending them for comparison. Rather, by raising such objection, mid-way the investigation, the petitioner is preempting his guilt.

It may further be noticed that earlier handwriting samples of the petitioner had been taken in FIR No. 63 dated 02.06.2015 and not in the present FIR i.e. 117 dated 25.09.2015. Thus, the prosecution cannot be restrained from obtaining the handwriting samples of the petitioner in FIR No. 117.

Additionally, the order dated 01.06.2021 passed by the learned Magistrate, was never challenged by the petitioner. Rather, a very circumventing procedure had been adopted by the

petitioner in moving an application for discarding the request of the prosecution for comparison of the handwriting samples of the petitioner, which was already allowed vide order dated 01.06.2021. The said process amounts to virtual recalling of the order dated 01.06.2021. There being no provision for allowing such a course, the very application moved by the petitioner, is not maintainable.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

(HARNARESH SINGH GILL)
JUDGE

19.07.2021
ds

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