

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

CRR-705-2021

Date of Decision: 20.7.2021

Pankaj

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Aditya Sanghi, Advocate, for the petitioner.

Rajesh Bhardwaj, J. (ORAL)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Present revision petition has been filed by the petitioner-accused impugning the order dated 16.4.2021 passed by the learned Additional Sessions Judge, Narnaul, wherein, the application filed by him under Section 294 Cr.P.C. has been dismissed.

The petitioner had filed an application under Section 294 Cr.P.C. on the premise that as per the version of the victim as mentioned in the complaint Ex.P-1, two boys, namely, Pankaj and Manish met and served her water to drink and she became unconscious. It had been further endorsed by the victim in her statement recorded under Section 164 Cr.P.C. Learned counsel for the petitioner had contended that five photographs taken from Ex.MO55 and Ex.MO56 falsify the version of the victim as alleged in the complaint Ex.P-1 and in the statement recorded under Section 164 Cr.P.C. He alleged that because all the copies of the these documents were not provided to him, therefore, he could not put the same to the victim at the time of her examination as PW-1. Thus, he prayed that the victim be

summoned to admit or deny the genuineness of the photographs and video clip of the victim in the pen drive Ex.MO55 and Ex.MO56. This application filed by the petitioner was opposed by the learned PP for the State and after hearing the parties, learned Additional Sessions Judge dismissed the same vide order dated 16.4.2021. Aggrieved by the same, the petitioner has filed the instant revision petition.

Learned counsel for the petitioner contends that the conclusion drawn by the learned trial Court is totally erroneous and thus, the order should be set aside and the victim should be ordered to be summoned so as to deny or admit the photographs and video clip in Ex.MO55 and Ex.MO56 as per the Section 294 Cr.P.C.

Notice of motion.

On asking of this Court, Mr. B.S. Virk, Deputy Advocate General, Haryana accepts notice.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submitted that the impugned order suffers from no illegality whatsoever and thus, the revision petition deserves to be dismissed.

I have heard learned counsel for both the parties and perused the record.

It is evident from the factual matrix of the case that the petitioner had earlier filed an application under Section 311 Cr.P.C. with a similar prayer. However, on hearing the parties, learned Additional Sessions Judge, Narnaul declined the same vide order dated 19.11.2019, which has been appended with the revision petition as Annexure P-10. It is apposite to note that this order was never further challenged by the petitioner and thus,

attained finality. However, the petitioner filed the application under Section 294 Cr.P.C. with a similar prayer. Section 294 Cr.P.C. reads as under:-

“294. No formal proof of certain documents. (1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.”

A bare perusal of Section 294 Cr.P.C. would show that Section 294(1) Cr.P.C. provides options to both the prosecution as well as the defence for admission and denial of the genuineness of the documents not only by the accused or the complainant but through their pleaders as well. Such an issue had been dealt with by Hon'ble the Supreme Court in case of Shamshe Singh Verma Vs. State of Haryana, (2016) 15 SCC 485. Their Lordships observed in para Nos.11 and 14 as under:-

“11. The object of Section 294 CrPC is to accelerate pace of trial by avoiding the time being wasted by the parties in recording the unnecessary evidence. Where genuineness of any document is admitted, or its formal proof is dispensed with, the same may be read in evidence. Word “document” is defined in Section 3 of the Indian Evidence Act, 1872, as under: -

“Document’ means any matter expressed or described

upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

14. In view of the definition of 'document' in Evidence Act, and the law laid down by this Court, as discussed above, we hold that the compact disc is also a document. It is not necessary for the court to obtain admission or denial on a document under sub-section (1) of Section 294 CrPC personally from the accused or complainant or the witness. The endorsement of admission or denial made by the counsel for defence, on the document filed by the prosecution or on the application/report with which same is filed, is sufficient compliance of Section 294 CrPC. Similarly on a document filed by the defence, endorsement of admission or denial by the Public Prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved, and can be read in evidence. In a complaint case such an endorsement can be made by the counsel for the complainant in respect of document filed by the defence.”

Applying the mandate of the statutory provisions with the law settled by Hon'ble the Supreme Court in the case of Shamsher Singh Verma (supra), it is apparent that the prayer made by learned counsel for the petitioner is totally misconceived in asking for summoning of the victim for the admission or denial of the material contents contained in Ex.MO55 and Ex.MO56 etc. as prayed in the application because their personal presence is not the mandate of Section 294 Cr.P.C. and the same can be carried out through their counsels. Hon'ble Supreme Court has categorically held that the object of Section 294 Cr.P.C. is to accelerate pace of trial by avoiding the time being wasted by the parties in recording the unnecessary evidence.

Therefore, the revision petition filed by the petitioner with the prayer of summoning the victim is totally misconceived. The learned trial Court rightly observed that the relief which was prayed by the petitioner in the application filed under Section 311 Cr.P.C. cannot be again sought under Section 294 Cr.P.C. Section 294 Cr.P.C. is not a substitute for Section 311 Cr.P.C. However, the learned trial Court had fallen in error by confining the mandate of the Section 294 Cr.P.C., to the victim (complainant), accused or witness personally. As the endorsement of admission or denial by the counsel of the party concerned, as the case may be, is sufficient compliance of Section 294 Cr.P.C., the impugned order is contrary to the interpretation of their Lordships in the judgment cited above.

Hence, the impugned order is set aside with liberty to the petitioner to approach the concerned Court for the redressal of his grievances, afresh, if so advised. The learned Court would deal the same in accordance with law laid down as discussed herein above. It is being further clarified that the trial Court while dealing with the such an application, if filed by the petitioner, would be well within its domain to take in to consideration all the other attending circumstances of the case, the stage of trial, the purpose of filing the application for filling up of any lacuna or prolonging the trial or any other which it may find on its assessment. Thus, the present petition is disposed of in the above mentioned terms.

(RAJESH BHARDWAJ)
JUDGE

20.7.2021
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No