

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

1.

CRM-M-11894-2018

Date of decision: March 16, 2022

State of Haryana

....Petitioner

Versus

Asman and another

....Respondents

2.

CRM-M-13067-2018

State of Haryana

....Petitioner

Versus

Jasbir

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Deepak Sabharwal, Additional A.G., Haryana.
for the petitioner.

Ms. Samridhi Sareen, Advocate
for the respondent (in CRM-M-13067-2018)

ARVIND SINGH SANGWAN, J.

This order will decide the above mentioned two petitions.

Prayer in both the petition is for setting aside the orders dated 31.10.2017 and 21.11.2017 passed by the ACJM, Bhiwani in case titled 'State Vs. Asman and another' and 'State Vs. Jasbir, whereby the name of witness No.9, i.e. Reader to the District Magistrate, Bhiwani has been struck off from the list of witnesses and the name of Shri Pankaj, the then District

Magistrate, Bhiwani was ordered to be added in the list of witnesses and he was further summoned to appear as a witness.

Brief facts of the case are that an FIR was registered against the respondent accused under Section 25 of the Arms Act in Police Station Sadar Bhiwani, District Bhiwani for keeping in possession a country made pistol of .315 bore, along with 8 live cartridges without having any permit or license. Since it was a requirement of the Arms Act that before prosecuting the accused sanction for prosecution should be obtained from the concerned District Magistrate, being the competent authority, the sanction for prosecution was allowed by the District Magistrate. The learned State counsel has further submitted that the sanction order was attached along with the report submitted under Section 173(2) Cr.P.C. and the Reader to the District Magistrate, Bhiwani was cited as a witness in the list of witnesses attached with the challan as sanction, being a public document, can be formally proved by the Reader of the District Magistrate.

Learned State counsel has further submitted that on 31.10.2017, without there being any application by the respondent-accused or any request by the State, the ACJM, Bhiwani *suo motu* passed the following order :-

“Hence, the name of witness No.9-Reader to District Magistrate is ordered to be struck off the list of witnesses. Instead, the name of Sh. Pankaj, District Magistrate is ordered to be added the list of witnesses. PWs including the concerned District Magistrate be summoned for next date of hearing i.e. 18.12.2017.”

Learned State counsel has further argued that, thereafter, the said order was challenged before the Court of Sessions. However, the same was dismissed by observing that the order, being an interlocutory order, in terms of Section 397(2) Cr.P.C. and, therefore, the revision is not maintainable. The State counsel further submit that there would be no adjudication on merits by the revisional Court and as the revision petition was dismissed, being not maintainable.

On merits, learned State counsel has submitted that the impugned order is illegal against law and facts and the trial Court without any formal application by the accused or the prosecution has deleted the name of the Reader to District Magistrate, Bhiwani from the list of witnesses and rather has summoned the District Magistrate himself to appear and prove the order.

Learned counsel further submit that the sanction order is a public document under Section 74(1)(iii) of the Evidence Act and can be proved by the Reader to District Magistrate, being a public document as per Section 78 of the Evidence Act, which provides that the order passed by the State Government or department of the State Government can be proved from the record of the department. The counsel further submits that a certified copy of the sanctioned order prepared under Sections 76/77 of Evidence Act, can always be proved by production of the original record by the Reader of the District Magistrate and there was no requirement to summon the District Magistrate, and, therefore, the impugned order is liable to be set aside.

Learned State has referred the judgment of the Hon'ble Supreme Court titled 'R.S. Singh Vs. U.P. Malaria Nirikshak Sangh and others' 2011(4) SCC 281, wherein it is held that the Courts ordinarily should not summon the senior officials of the Court and such practice should be adopted in exceptional case. In the instant case, since the document is a public document admissible in evidence, the same can be proved by the Reader to the District Magistrate, who can bring the original record for the perusal of the Court.

The learned State counsel has further submitted that as per the Section 57 of the Evidence Act, the Court can always take the judicial note with regard to the signature of a government official holding any public office in the State and since the Deputy Commissioner is holding a public office in the State, the Court should have drawn a presumption with regard to the authenticity of the sanction order.

In reply, the counsel for the respondents has raised only one objection that the presence of District Magistrate is required so as to cross-examine him on the material available before him on the basis of which he has applied his mind before granting the sanction.

In reply, the learned State counsel has submitted that the order itself is self speaking that after proper perusal of all the materials available on record, the sanction was granted, as per the detail reasons given in the sanction order itself.

After hearing learned counsel for the parties, I find merit in the present petition for the following reasons:-

- (a) Neither there was any application by the accused nor by the State and, therefore, the trial Court was not justified in *suo motu* substituting witness No.9-Reader to the District Magistrate, Bhiwani with District Magistrate, Bhiwani himself.
- (b) The witness No.9, i.e. Reader to District Magistrate, Bhiwani was cited as a witnesses only to prove the sanction granted by the District Magistrate, Bhiwani, being public document. Since the Reader will bring the original record for the perusal of the Court as well as for the defence counsel, who will have a right to cross-examine this witness for the reasoning given in the order and material available on record forming basis of granting sanction there is no justification in summoning the District Magistrate himself.
- (c) Even otherwise the sanction order is a public document under Section 74(1) (iii) of the Indian Evidence Act and the certified copy prepared of under Section 76/77 of the Evidence Act, is admissible in evidence.

- (d) Even otherwise, if the prosecution do not opt to cite District Magistrate himself as a witness, it will give a benefit of doubt to the accused and defence can always raise an objection that no right to cross-examine the person, who accorded the sanction after applying the mind was granted.

In view of the above, this petition is allowed, the impugned orders dated 31.10.2017 and 21.11.2017 passed by the ACJM, Bhiwani are set aside. The trial Court will proceed further by summoning witness No.9, i.e. Reader to the District Magistrate, Bhiwani for recording the evidence.

March 16, 2022
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No