

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

Criminal Misc. No.M-19693-2022(O&M)

Date of Decision: August 01, 2022

Sachin Nayyar and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

--

Present: - Mr.Amit Dhawan, Advocate
for the petitioners.

Mr.B.S.Sewak, Addl.AG, Punjab.

-

HARINDER SINGH SIDHU, J.

By filing this petition, challenge is made to the order dated 03.02.2022 (Annexure P-7) passed by Ld. Additional Sessions Judge, Jalandhar in case FIR No.72 dated 02.04.2013 under Sections 306, 34 IPC, Police Station Nakodar, District Jalandhar vide which the Ld. Court has allowed an application moved by the prosecution under Section 65 of the Indian Evidence Act read with Section 311 CrPC.

The petitioners are accused in the aforesaid case. The FIR was lodged on the complaint of one Vishal Nayyar, who stated that he owns a plastic furniture shop at Nakodar. His father Ashok Kumar Nayyar (deceased) used to sit with him in the shop. Sachin Nayyar – petitioner No.1, Sumit Nayyar – petitioner No.2 had borrowed Rs.20 lacs from his

father. His father was in need of money. He asked them to return the amount. However, they did not do so, because of which his father used to remain disturbed. Even after the intervention of Panchayat, they did not return the money. In this regard the complainant's father got registered an FIR against them. On 01.04.2013 at about 9.00 PM, complainant's father telephoned the complainant and informed him that he was under depression and on account of the harassment by the petitioners, he had consumed poison and was present in the ancestral house. The complainant along with his mother Neelam Nayyar reached the place. They took the father of the complainant to Government Hospital, Nakodar, from where he was referred to Civil Hospital, Jalandhar, where he died during treatment. A suicide note was found in the pocket of his shirt. In the said note he had written that he entered into an agreement to sell his shop for Rs.1,03,00,000/- to Subhash Chander. He had received Rs.33 lacs as token money. The petitioners were aware of this transaction. They borrowed Rs.17 lacs from him claiming that they were desperately in need of money. As the petitioners were his relatives, he lent them the amount. The petitioners gave him a cheque with forged signatures. The petitioners later borrowed Rs.3 lacs and promised to return entire Rs.20 lacs at the earliest. When the complainant's father asked the petitioners to return the money, they forcibly entered his house, beat him and even threatened to kill him. The suicide note further mentioned that on account of the conduct of the petitioners he was utterly shocked. It further mentioned that if he collapsed, case be registered against the petitioners.

The matter was investigated and challan was filed. Kabal Singh, (Retd.) Sub Inspector, the Investigating Officer of the case was examined as PW9. He proved on record a copy of the FSL report dated 03.09.2013 (Ex.PW9/Z) regarding comparison of handwriting of the deceased on the alleged suicide note. Thereafter, the prosecution moved an application under Section 311 Cr.P.C for summoning Dr.Ashwani Kalia, Assistant Director (Documents), FSL, Punjab, along with relevant record and one Rajneesh, a Journalist of Punjab Kesari Newspaper. The said application was allowed. Dr.Ashwani Kalia appeared before the Ld.Trial Court on 30.04.2019 through video conference to prove his report regarding the handwriting of deceased Ashok Nayyar. However, he could not be examined as he had brought on record only one expert report, whereas, there were two other reports as well.

Thereafter, the prosecution moved an application under Section 65 of the Indian Evidence Act read with Section 311 CrPC to prove on record a copy of the note-book containing handwriting of the deceased with which the alleged suicide note was compared by the expert. The said application has been allowed by the impugned order.

It was the case of the prosecution that SI(Retd.) Kabal Singh and SI (Retd.) Prithvi Raj while deposing in Court had stated that they had sent the entire record including the note book containing the standard handwriting of Ashok Nayyar (deceased) to FSL for comparison with the suicide note and that they had placed the entire record received from the

concerned FSL with the challan. The Court vide order dated 17.09.2021 had directed the SHO to depute a responsible Police Officer not below the rank of SI to trace out the record. Vide order dated 10.10.2019 the Court had asked SI Kabal Singh to explain in writing the loss of the original note-book containing the admitted handwriting of the deceased. SI Kabal Singh deposed on 01.11.2019 that he had attached the report of FSL with the challan. The challan had been prepared by SI Subhash Baath and was submitted in the Court. However, the original note book of the deceased was not available with the judicial file. He stated that a copy of the note book was lying in the office of FSL. SI Subhash Baath had stated in court on 17.09.2021 that original note book in the case could not be traced. Contending that the note book is a material evidence in the case, as the suicide note had been compared with the signatures of the deceased in the said note book, the application under Section 65 of the Evidence Act was filed.

The petitioners had objected to the application stating that the prosecution had not been able to make out a case for summoning the copy of the note-book from the FSL as it had not been proved that the original note book had been destroyed or lost.

The Ld. Additional Sessions Judge, Jalandhar referred to the facts in detail. He noticed that on 17.09.2019 SI(Retd.) Kabal Singh and SI(Retd.) Prithvi Raj had appeared before the Court and stated that they had sent the entire record including the note book containing standard hand

writing of deceased Ashok Kumar to concerned FSL for its comparison with the disputed suicide note and they had placed the entire record received from the FSL along with the challan. The concerned SHO was also directed to depute some responsible police official to trace out the record from the offices of the FSL, Mohali as well as SSP, Jalandhar. On 10.10.2019, Constable Gagandeep Singh of Police Station City Nakodar also stated that he had deposited one sealed parcel with MHC of the Police Station. Said sealed parcel was handed over to HC Mangat Ram for the purpose of getting it numbered from SSP Office, Jalandhar (Rural), who after getting it numbered handed back the said parcel to MHC ASI Narinder Singh. Thereafter, the said sealed parcel was handed over to SI Kabal Singh by MHC ASI Narinder Singh on 20.09.2013. There were signatures of SI Kabal Singh on the FIR Register brought by him in the Court and copy of the same was produced indicating that he had received the parcel.

Notice was also issued to SI Kabal Singh to explain the loss in writing. On 01.11.2019, SI Kabal Singh made a statement that after receiving report from FSL Mohali, he had attached the same with the challan. Thereafter, he was transferred. Challan was prepared by SHO SI Subhash Bath and it was submitted in the Court by ASI Phrithi Raj. He also stated that photostat copy of the diary was lying in the office of FSL Mohali as he along with ASI Pithivi Raj had gone to the FSL. He stated that during investigation he received original diary from Vishal s/o Ashok Nayyar (deceased) and after that he sent the original diary to the FSL, Mohali as the

FSL had raised an objection and directed them to send some more samples of writing. After that he sent the above said original diary to FSL, Mohali through HC Satnam Singh. He further stated that he had seen the challan papers in the Court, where the original note book was not attached. He also stated that C. Gagandeep Singh had brought the report from FSL along with documents mentioned in letter dated 18.09.2013 issued by Director, FSL, Punjab, which included the aforesaid original diary.

It was in view of the above that the Ld. Trial Court observed that it is clear that the relevant note book in original is not traceable despite notices being issued to the Police Officers who dealt with the file during investigation. The copy of the note book was said to be available in the office of FSL, Mohali. Production thereof was material to determine the controversy. It was also observed that no prejudice would be caused to the accused as they would have every opportunity to cross-examine the concerned witness on all aspects.

Ld. Counsel has contended that the order is liable to be set aside as the prosecution has failed to establish that the original note book containing the signatures of the deceased has been lost or misplaced or that it had even been sent to the FSL.

There is no merit in this contention.

The Ld. Additional Sessions Judge has referred to the statement of SI(Retd.)Kabal Singh, wherein, he stated that he had received the original note book from the son of the deceased and the same had been sent to the

FSL. The Court has also discussed in detail the reasons which led it to conclude that the original note book is not traceable. The note book is a material evidence in the case, as the suicide note had been compared with the signatures of the deceased in the said note book.

Thus, there is no infirmity in impugned order.

Dismissed.

August 01, 2022

gian

**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No