

CRM-M-11893-2018 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-11893-2018 (O & M)

Date of decision: 18.04.2023

State of Haryana

... Petitioner

V/s

Sampat and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Neeraj Poswal, AAG, Haryana,
for the petitioner-State.

None for the respondents.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing the summoning order dated 14.11.2017 (Annexure P-1) passed by the Additional Chief Judicial Magistrate, Bhiwani whereby the District Magistrate, Bhiwani has been ordered to be added in the list of witnesses to prove the sanction order and the order of the Additional Sessions Judge, Bhiwani dated 04.01.2018 (Annexure P-2) whereby the revision petition filed by the State has been dismissed.

2. The brief facts of the case are that an FIR No.113 dated 07.03.2017 was registered at Police Station Bhiwani under Sections 25 and 54 of the Arms Act. After the investigation was completed, a final report

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Judicial Magistrate, Bhiwani and the Reader to the District Magistrate, Bhiwani, was named as one of the witnesses to prove the sanction order passed by the District Magistrate, Bhiwani in compliance of Section 39 of the Arms Act. The Additional Chief Judicial Magistrate, Bhiwani, vide order dated 14.11.2017 ordered that the name of the Reader to the District Magistrate be struck off from the list of witnesses and in place of the same, the name of the District Magistrate was ordered to be added to prove the sanction order. A copy of the order dated 14.11.2017 is attached to the present petition as Annexure P-1.

2. Thereafter, a revision petition was preferred by the State and the District Magistrate, Bhiwani against the order dated 14.11.2017 (Annexure P-1), which came to be dismissed by the Additional Sessions Judge, vide his judgment dated 04.01.2018 (Annexure P-2) holding that the revision petition was not maintainable as the same was barred under Section 397(2) Cr.P.C., the order being interlocutory in nature.

3. The aforementioned judgments are under challenge in the present petition.

4. The learned counsel for the petitioner-State contends that the Additional Chief Judicial Magistrate had failed to take into consideration the fact that the sanction order was a public document under Section 74(1)(iii) of the Evidence Act and the prosecution for proving the said document had cited the name of the Reader to the District Magistrate, Bhiwani as a prosecution witness to prove the fact that the police had taken the sanction of

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the District Magistrate in compliance of the statutory requirement as envisaged under the Arms Act. Being a public document, the sanction order had to be proved as per Section 78 of the Evidence Act, which meant that the orders passed by the Government or any Department of the Government could be proved by the records of the Department on being certified by the heads of those departments. This meant that producing a duly certified copy of the sanction order would have been sufficient and no further proof was required. He contends that a public document can always be proved by production of the certified copies prepared under Section 76 of the Evidence Act as provided under Section 77 of the aforesaid Act. He contends that the Courts below had failed to consider the fact that the Additional Chief Judicial Magistrate had suo moto passed the order of summoning the District Magistrate without any request by the prosecution or defence. A perusal of the report under Section 173 Cr.P.C. would also show that the original sanction order was placed on the record which was self-explanatory and a speaking order and nothing more was required. He contends that in a similar situation this Court in the case of 'State of Haryana versus Asman and another' as well as 'State of Haryana versus Jasbir' bearing CRM-M Nos.11894 of 2018 and 13607 of 2018 vide a common order dated 16.03.2022 has quashed the orders allowing the Reader to the District Magistrate to prove the sanction order.

5. None has appeared on behalf of the respondents despite service.
6. I have heard the learned counsel for the petitioner-State.

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7. This Court vider order dated 16.03.2022 passed in the case of State of 'Haryana versus Asman and another' as well as 'State of Haryana versus Jasbir' bearing CRM-M Nos.11894 of 2018 and 13607 of 2018, held as under:-

“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,

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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”.

8. A perusal of the aforementioned judgment would show that this Court in an identical case has held that there was no justification in summoning the District Magistrate himself when the Reader to the said District Magistrate who was cited as a witness could very well have proved the sanction granted by the District Magistrate, it being a public document.

9. In view of the aforementioned facts, the present petition is allowed and the order dated 14.11.2017 (Annexure P-1) passed by the Additional Chief Judicial Magistrate, Bhiwani and the judgment dated 04.01.2018 (Annexure P-2) passed by the Additional Sessions Judge, Bhiwani are set aside. The Trial Court is directed to proceed further by summoning the witness No.11 i.e. the Reader to the District Magistrate, Bhiwani for recording his evidence, after which the Trial shall be concluded in accordance with law.

April 18, 2023
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No