

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-11906-2018 (O&M)
Date of decision: 11.01.2023

State of Haryana

....Petitioner(s)

Versus

Sudhir and another

...Respondent(s)

CRM-M-12654-2018 (O&M)

State of Haryana

....Petitioner(s)

Versus

Sahil

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Aditi Girdhar, AAG, Haryana
for the petitioner.

Mr. Sunny Bhardwaj, Advocate
for the respondent.

AMAN CHAUDHARY. J.

This order shall dispose of two petitions as the same are for quashing the summoning order dated 11.10.2017 (Annexure P-1) passed by the ACJM, Bhiwani whereby the District Magistrate, Bhiwani has been added in the list of witnesses to prove the sanction order and the order of Additional Sessions Judge, Bhiwani dated 04.01.2018 (Annexure P-2) whereby the revision petition filed by the State has been dismissed.

Brief facts of the case are that an FIR was registered under Section 25 of the Arms Act in Police Station Sadar Bhiwani, District Bhiwani. After investigation, the Final Report under Section 173(2) Cr.P.C. was submitted before the ACJM and the Reader to District Magistrate, Bhiwani was named as one of the witnesses to prove the sanction order passed by the District Magistrate in compliance of Section 39 of the Arms Act. Learned ACJM vide order dated 11.10.2017 ordered the name of the reader to the District Magistrate to be struck off from the list of witnesses and in his place, the name of the District Magistrate was added to prove the sanction order. Thereafter, a revision petition was preferred by the petitioner-State and the District Magistrate, Bhiwani against the said order which was dismissed by the Learned Additional Sessions Judge vide his judgment dated 04.01.2018 holding it as not maintainable, being against interlocutory order was barred under Section 397(2) Cr.P.C.

Learned State counsel has further submitted that on 11.10.2017, 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. 6-Reader to District Magistrate is ordered to be struck off the list of witnesses. Instead, the name of Sh. Anshaj Singh, 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. 07.12.2017.”

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 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. The learned Sessions Judge also did not adjudicate on merits but dismissed the revision filed as not maintainable.

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 was*** held that the Courts ordinarily should not summon the senior officers. Such practice should be adopted in exceptional cases. He also relied on judgment dated 16.03.2022 in the case of **State of Haryana vs. Asman and another**, CRM-M-11894-2018, passed by this Court, wherein similar order passed by Additional Chief Judicial Magistrate Bhiwani, as in the present case was set aside.

On the other hand, learned counsel for respondents submitted that the presence of District Magistrate was very much required, to cross-examine him, as to grant sanction, as such, the impugned order has been rightly passed.

Heard.

A profitable reference can be made to the judgment in the case of **Gaya Din vs. The State**, AIR 1958 All 39, wherein the argument advanced on behalf of the applicant that there is no evidence to prove the signature of the District Magistrate, was found to be untenable. It was observed that Section 58 of the Evidence Act, lays down that no fact of which the Court shall take judicial notice need be proved. Under Section 57(7) of the Act a Court is bound to take judicial notice of the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any State, if the fact of

their appointment to such office is notified in any official gazette. It was further observed that, "The signature in the present case purports to be that of a public officer who has described himself as the 'District Magistrate.' The fact that his appointment to such office has been notified in the official gazette is not challenged before me. The Court can, in the circumstances justifiably make a presumption that the signature under the order of sanction is the genuine signature of the authority concerned, and that the said authority as described under the signature is the District Magistrate who is the person authorised to grant sanction for such a case. Further, Section 74(1)(iii) of the Act provides that documents forming the acts or records of the acts of the public officers, legislative, judicial and executive, of any part of India, or of the commonwealth or of a foreign country, are public documents. In view of the said provision the charge-sheet on which the order of the District Magistrate is written is a public document. Under Section 77 of the Act certified copies of the contents of such a document are themselves proof of the contents of the original. In the present case the original document was itself produced by the prosecution. If a certified copy could be considered to be a sufficient proof of the content's of the original, a fortiori the production of the original document itself must be considered to be more than enough for the same purpose.

In the case of **Dhanpat Vs. State 1959 SCC Online All 275**, it was held that, "In this case also the letters 'D.M.' with a signature which is not decipherable are found at the bottom of the endorsement. Judicial notice can be taken of this signature under Section 57(7) of the Indian Evidence Act. The only question which remains is whether the words 'Prosecution sanctioned' can also be held to be proved. In view of the authorities cited above and in view of the

provisions of the Indian Evidence Act which relate to the proof of public documents, I am of the opinion that no formal proof of this endorsement is necessary and it can be held to be proved as an original public document.”

This Court in the case of **Asman and another** (supra), had set aside orders passed by the trial court wherein also the name of Reader to the District Magistrate had been struck off from the list of witnesses and that of the District Magistrate Bhiwani was ordered to be added, who was further summoned to appear as a witness, as is the case in hand.

It is apposite to note that 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 *per se* admissible in evidence. The Reader to District Magistrate, Bhiwani was rightly cited as a witnesses is in order to prove the sanction granted by the District Magistrate, Bhiwani as the original record can be produced by him for the perusal of the Court as well as for the defence counsel, who can cross-examine this witness, as a right as regards the material available on record which was made the basis to grant sanction. Similarly, it is pertinent to mention that despite there being no application, the trial Court *suo motu* substituted the Reader, who was witness No.6, with the District Magistrate, Bhiwani, without there being any justification to summon the District Magistrate for the aforesaid purpose.

The aforesaid order which sought to include the District Magistrate in the list of witnesses to prove the sanction order solely on account of the fact that, “the sanction order cannot be proved by merely proving the signatures of the District Magistrate on the same”, is liable to be set aside in light of the judicial pronouncements.

Accordingly, this petition is allowed. The impugned orders dated 11.10.2017 (Annexure P-1) passed by the ACJM, Bhiwani and 04.01.2018 passed by the Additional Sessions Judge, Bhiwani are set aside.

A photocopy of this order be placed on the file of connected case.

(AMAN CHAUDHARY)
JUDGE

January 11, 2023

Mehak/S.Sharma(syr)

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