
(2013) 07 P&H CK 0573
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 2289 of 2013

Mukesh and Another

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 311A
Penal Code, 1860 (IPC) — Section 304B

Citation : (2013) 07 P&H CK 0573

Hon'ble Judges : Rekha Mittal, J

Bench : Single Bench

Advocate : Vikrant Pujara, for the Appellant;

Final Decision : Dismissed

Judgement

Rekha Mittal, J.—The present petition lays challenge to order dated 11.07.2013, passed by the Additional Sessions Judge, Panipat, whereby application filed by the petitioners for summoning the witnesses and to send copies of CDs to Forensic Science Laboratory, Madhuban (for brevity, "FSL") for inspection and to prove conversation recorded in the CDs, has been dismissed. Counsel for the petitioners submits that as analysis of conversation between Gulshan and Surender, recorded in the CDs, is a material piece of evidence, essential to just decision of the case, in which the petitioners have been charge-sheeted for commission of offence u/s 304-B of Indian Penal Code in regard to death of Sushma wife of Mukesh, the learned trial Court has wrongly rejected the prayer of the petitioners and dismissed the application. It is further submitted that the application of the petitioners may be allowed, the trial Court may be directed to obtain voice sample of Surender and thereafter, CDs containing conversation between Gulshan and Surender and voice sample of Surender, be sent to FSL, for examination and report.

2. I have heard counsel for the petitioners and perused the records.

3. Section 311 of the Code of Criminal Procedure (for brevity, "the Code") empowers the trial Court to summon any witness or examine any person in attendance or recall any witness already examined if his evidence is material to the just decision of the case. The application filed by the petitioners for obtaining and sending voice sample of Surrender and alleged conversation recorded in CDs to FSL for analysis and report, by no stretch falls within the scope and ambit of section 311 of the Code. However, Section 311A of the Code empowers a Magistrate to direct any person to give specimen signatures or handwriting for the purpose of any investigation or proceeding under the Code. However, proviso appended to Section 311A of Code says that no order u/s 311A shall be made unless the person has at sometime been arrested in connection with such investigation or proceeding.

4. In the case in hand, the application was submitted before the Court of Additional Sessions Judge. A reading of Section 311A of the Code would make it explicitly clear that only a Magistrate is empowered to order any person to give specimen signatures or handwriting. Counsel for the petitioners has failed to invite attention of this Court to any provision in the Code, which empowers the trial Court to direct any person to give voice sample.

5. It is an admitted fact that Surrender whose voice sample sought to be obtained is neither the complainant nor an accused or a witness of the prosecution or defence. Surrender was never arrested in connection with investigation or proceeding under the Code. It is beyond comprehension as to under what provision of law, Surrender can be called upon by the court to give his voice sample for the purpose of comparison. This apart, the Court cannot be used as an instrument to collect evidence to prove innocence of the accused. Counsel for the petitioners has otherwise failed to satisfy this Court that, in case, any conversation recorded in the CDs is proved on record, the same would help the Court in the just decision of the case.

6. Taken from any angle, the petitioners have failed to substantiate their plea that the order passed by the trial Court is erroneous much less illegal or perverse as would call for interference by this Court. In view of the above, the petition is dismissed.