

(2011) 03 SHI CK 0291
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 96 of 2001

State of Himachal Pradesh

APPELLANT

Vs

Laje Ram and Others

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311A
Evidence Act, 1872 — Section 73
Identification of Prisoners Act, 1920 — Section 5, 5
Penal Code, 1860 (IPC) — Section 120B, 34, 420, 467, 468

Citation : (2011) 8 RCR(Criminal) 743

Hon'ble Judges : Surinder Singh, J; R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—The Respondents were acquitted by the learned trial Court in Criminal Case No. 208-I of 1994/165-II of 1994, decided on 31st December, 1999, as such State filed the present appeal against their acquittal.

2. Respondent Laje Ram was charge-sheeted for the offences punishable under Sections 467, 468, 471 and 420 of the Indian Penal Code and other Respondents for conspiracy u/s 120-B read with Section 34 of the Indian Penal Code.

3. Respondent Laje Ram was working in the account branch of the office of Divisional Forest Officer (DFO), Parwati Division. Respondents Kamal Kant is his real brother and Ghungru his uncle, whereas Respondent Ashok Kumar has been running a provision store from where Laje Ram used to purchase consumable articles.

4. It is alleged that Timber Distribution (TD) applications pertaining to Block Office, Bajaura for incorporating in cash account for the month of March, 1990, were scrutinized. The office came across the application Ext.PW11/A pertaining to Ashok Kumar Respondent. The signatures of the Range Officer were found having burnt with the cigarette, but in column No. 6 pertaining to the

recommendation of the said Officer. Presuming as a foul play, the matter was referred to the then DFO, Parwati Division for clarification. Then Timber Distribution record of Khokhan forest and Notified Area Committee, Bhunter was scrutinized.

(i) It was detected that the said application of Ashok Kumar Respondent bore a fake sanction number, the mention of which was not found in the Timber Distribution register. While scrutinizing the said record of the said Block, it was also detected that the TD application of Respondents Ghungru and Kamal Kant were tampered with. In fact two trees of Kail I-A were sanctioned in favour of Ghungru Ram from Khokhan forest, but it was shown as two trees of Devdar II-B from compartment No. 1/44 instead of Kail trees.

(ii) In the TD application of Respondent Kamal Kant against two trees of Kail of II-B, which were sanctioned as per TD register, the application was forged by showing two trees of Devdar.

(iii) In TD register, as per sanction No.KHN/303/88-89, one tree of Devdar I-A and one tree of Kail I-A were sanctioned in favour of one Kubja Devi daughter of Karam Chand, resident of Sara Bai. The signatures of Range Officer and D.F.O. were forged on this application and the timber shown in the name of Bhagti, in the TD register, was shown against the name of Dili Devi (PW6).

(iv) Similarly, Respondent Laje Ram concealed/withheld the TD application of PW5 Kanta Devi and took up a sanctioned TD application of one Shri Nime Ram and re-wrote the name of Kanta Devi on the said application. In this way, also deceived the illiterate ladies Dili Devi and Kanta Devi and forged the record.

(v) The handwriting and signatures of the accused persons were obtained before the Magistrates and sent for the opinion of the Government Examiner of Questioned Documents. The aforesaid interpolation/manipulations were alleged to be in the hands of Laje Ram aforesaid.

5. After completing investigation in this case, challan was presented in the Court for the trial of the Respondents and at the end of the trial they were acquitted on the ground that there was no direct evidence on record against the Respondents and also disputed the authority of the Magistrate to take the specimen writings of Respondent Laje Ram, which was made basis for the comparison for the Government handwriting expert.

6. We have heard learned Counsel for the parties and have gone through the evidence on record carefully.

7. Shri R.K. Sharma, learned Senior Additional Advocate General, vehemently argued that the learned trial Court wrongly ignored the report of the Government Examiner of the Questioned Documents to which he proved it during the trial of the case and the learned trial Court wrongly disputed the authority of the Magistrate to take the signatures and writing of Respondent Laje Ram.

8. On the other hand, learned Counsel appearing for the Respondents supported the impugned judgment of acquittal.

9. PW6 Dili Devi stated having moved an application in the office of D.F.O. through Laje Ram for getting the trees sanctioned under the TD scheme and according to her, Laje Ram had assured to procure the sanction order in her favour on payment of some money to him. But in cross-examination she contradicted whatever she stated earlier in her examination-in-chief. No prayer was made by the learned Public Prosecutor seeking permission to cross-examine the said witness. From her statement two different versions, one in favour of the prosecution and the other in favour of the accused came forward. The legal position is that the version given in favour of the accused has to be accepted. Therefore, the impact of the statement of PW6 Dili Devi stands vanished. Further, PW5 Kanta Devi was declared hostile, as she did not support the case of the prosecution at all.

10. Thus, there is no direct evidence against the Respondents. The other evidence in the circumstantial form, i.e., the alleged tampering in the hands of Laje Ram in the aforesaid applications, as stated by PW15 Shri R.K. Jain, Government Examiner of the Questioned Documents based upon the examination of the questioned documents on the basis of the specimen writings and signatures obtained before the Magistrates on two occasions.

11. PW13 Swayam Ram was the S.D.M., Kullu. He stated that on 19th April, 1990, police had obtained the specimen writings of some of persons including Laje Ram and Ashok Kumar accused and PW14 Shri Shamsher Singh was the Chief Judicial Magistrate, Kullu in the year 1991 and police obtained the signatures and handwritings on 8th November, 1991 of Respondent Ashok Kumar alongwith few others and Shri R.C. Sharma, the then Additional Chief Judicial Magistrate also took the specimen and writings Ext.PW14/G to 14/O and all this material was used by PW15 Shri R.K. Jain, Handwriting expert to form his opinion.

12. The perusal of the records shows that the Investigating Officer had made the request to the Magistrates aforesaid for obtaining the specimen writing and signatures of the accused persons for comparison and the learned Magistrates proceeded to record their writings and signatures.

13. Thus the dispute is whether the Judicial Magistrate/Executive Magistrate was authorized to take specimen writing and signatures of the said accused during the investigation of the case when no matter was pending before either of them. Although, Section 311A of the Code of Criminal Procedure has been introduced by Act No. 25 of 2005 with effect from 23.6.2006 with respect to the powers of the Magistrate to order the person to give specimen signatures or handwriting, but no such powers were there prior to the year 2006. The said Section has been inserted on the suggestions of the Supreme Court made on its decision State of Uttar Pradesh Vs. Ram Babu Misra, that a suitable legislation be brought on the

analogy of Section 5 of Identification of Prisoners Act, 1980, to provide for the investiture of Magistrates with powers to issue directions to any person including an accused person to give specimen signatures and handwriting, but no such powers existed prior to such amendment. Undisputedly, the said amendment is prospective in nature and not retrospective.

14. In *State of Uttar Pradesh Vs. Ram Babu Misra*, the Supreme Court dealing with the scope and ambit of Section 73 of the Evidence Act held as under:

The second paragraph of Section 73 enables the Court to direct any person present in Court to give specimen writings ?for the purpose of enabling the Court to compare? such writings with writings alleged to have been written by such person. The clear implication of the words ?for the purpose of enabling the Court to compare? is that there is some proceeding before the Court in which or as a consequence of which it might be necessary for the Court to compare such writings. The direction is to be given for the purpose of "enabling the Court to compare" and not for the purpose of enabling the investigating or other agency "to compare". If the case is still under investigation there is no present proceeding before the Court in which or as a consequence of which it might be necessary to compare the writings. The language of Section 73 does not permit a Court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in a proceeding which may later be instituted in the Court. Further, Section 73 of the Evidence Act makes no distinction between a Civil Court and a Criminal Court. Would it be open to a person to seek the assistance of the Civil Court for a direction to some other person to give sample writing u/s 73 of the Evidence Act on the plea that it would help him to decide whether to institute a civil suit in which the question would be whether certain alleged writings are those of the other person or not? Obviously not. If not, why should not make any difference if the investigating agency seeks the assistance of the court u/s 73 of the Evidence Act on the plea that a case might be instituted before the Court where it would be necessary to compare the writings?

15. The Hon?ble Supreme Court also referred to Section 5 of the Identification of Prisoners Act, 1920, which provides:

If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898, (5 of 1898), it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to that effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer:

Provided that no order shall be made directing any person to be photographed except by a Magistrate of the first class:

Provided further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or

proceeding.

It was held:

There are two things to be noticed here. First, signatures and writing are excluded from the range of Section 5 of the Identification of Prisoners Act and, second 'finger impressions' are included in both Section 73 of the Evidence Act and Section 5 of the Identification of Prisoners Act. A possible view is that it was thought that Section 73 of the Evidence Act would not take in the stage of investigation and so Section 5 of the Identification of Prisoners Act made special provision for that stage and even while making such provision, signature and writings were deliberately excluded. As we said, this is a possible view but not one on which we desire to rest our conclusions. Our conclusion rests on the language of Section 73 of the Evidence Act.

16. As stated above, the Hon'ble Court also made a suggestion that suitable legislation may be made on the analogy of Section 5 of the Identification of Prisoners Act, 1920, to provide for the investiture of Magistrates with the powers to issue directions to any person including an accused person to give specimen signatures and writings.

17. The above ratio was reiterated by the Hon'ble Supreme Court in Sukhvinder Singh and Others Vs. State of Punjab, It was held:

The second paragraph of Section 73 (supra) enables the court to direct any person present before it to give his specimen writing 'for the purpose of enabling the court to compare' such writings with writings alleged to have been written by such person. The obvious implication of the words 'for the purpose of enabling the court to compare' is that there is some proceeding pending before the court in which or as a consequence of which it is necessary for the court to compare such writings. The direction is therefore required to be given for the purpose of 'enabling the court to compare' and not for the purpose of enabling an investigating or a prosecuting agency to obtain and produce as evidence in the case the specimen writings for their ultimate comparison with the disputed writings. Where the case is still under investigation and no proceeding are pending in any court in which it might be necessary to compare the two writings, the person (accused) cannot be compelled to give his specimen writings. The language of Section 73 does not permit any court to give a direction to an accused to give his specimen writing for comparison in a proceeding which may subsequently be instituted in some other competent court. Section 73 of the Evidence Act in our opinion cannot be made use of for collecting specimen writings during the investigation and recourse to it can be had only when the enquiry or the trial court before which proceedings are pending requires the writing for the purpose of 'enabling it to compare' the same. A court holding an enquiry under the Code of Criminal Procedure is indeed entitled u/s 73 of the Evidence Act to direct an accused person appearing before it to give his specimen handwriting to enable the court by which he may be subsequently tried

to compare it with the disputed writings. Therefore, in our opinion the court which can issue a direction to the person to give his specimen writing can either be the court holding the enquiry under the Code of Criminal Procedure or the court trying the accused person with a view to enable it to compare the specimen writings with the writings alleged to have been written by such a person, A court which is not holding an enquiry under the Code of Criminal Procedure or conducting the trial is not permitted, on the plain language of Section 73 of the Evidence Act, to issue any direction of the nature contained in the second paragraph of Section 73 of the Evidence Act. The words "any person present in the court" in Section 73 has a reference only to such person who are parties to a cause pending before the court and in a given case may even include the witnesses in the said cause but where there is no cause pending before the court for its determination, the question of obtaining for the purposes of comparison of the handwriting of a person may not arise at all the therefore, the provisions of Section 73 of the Evidence Act would have no application.

18. Admittedly, in the instant case, no proceedings against the persons before the Magistrates aforesaid were pending when the signatures and writings of the accused persons were obtained at the request of Investigating Officer. Therefore, the directions of the learned Magistrates were unwarranted and not contemplated by Section 73 of the Evidence Act. As such, the report of the handwriting expert loses its importance and is of no consequence and thus cannot be used against the Respondents.

19. If the said evidence of the handwriting expert is taken away altogether from consideration, there remains nothing on record to prove the charges against the Respondents. As such, the prosecution could not prove the case against the Respondents beyond reasonable doubt. Thus the appeal is without merit and is dismissed. However, it is made clear that the disciplinary authority shall not be precluded to conduct domestic enquiry or initiate disciplinary proceedings against Respondent Laje Ram, if not already taken.

20. The Respondents are discharged of their bail bonds entered upon by them at any stage during the proceedings of this case. Send down the record.