

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 10369 of 2022

Date of Decision: 10.3.2022

Sandeep Kaur and another

.....Petitioners

Versus

Union Territory, Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Saurabh Arora, Advocate
for the petitioner.

Mr. Rajeev Anand, APP, for U.T., Chandigarh.

SURESHWAR THAKUR, J. (ORAL)

(Through video conferencing)

1. In FIR bearing No. 209 of 8.12.2019, registered at Police Station Manimajra, U.T., Chandigarh, offences under Sections 420, 467, 468, 471, 120-B IPC, are embodied. The allegation, as made in the FIR (supra) is of preparation of false documents at the instance of the accused concerned.

2. Apparently, the offences (supra), as are cast in the afore FIR, are construable as offences, qua which the learned Magistrate can make trial as a warrants case, and, or in other words, the offences are non-bailable offences, besides are cognizable offences. The impact of the above is that the investigating officer concerned, has rather independent powers of investigations in respect of commission of offences embodied in the FIR (supra). However, he proceeded to make an application before the learned Judicial Magistrate Ist Class, Chandigarh, seeking an order for taking the

specimen, and, admitted signatures of the accused hence for comparisons thereof, being made, with the admitted, and, specimen signatures of the complainant, besides with the disputed signatures existing on the purportedly false document(s). Though, the learned Magistrate concerned, was required to be not entertaining the application, and, was empowered to direct the investigating officer concerned, to hold independent investigations with respect to the FIR. Nonetheless, the learned Magistrate concerned, has made affirmative directions upon the investigating officer's application, as preferred before him, for purpose (supra).

3. Be that as it may, Section 311A Cr.P.C., provisions whereof become extracted hereinafter, does empower the Judicial Magistrate, subject to his making an objective satisfaction, that when for the purposes of any investigation or proceeding under the Code, rather it is expedient to direct any person, including the accused person, to give specimen signatures or handwriting, hence to make an order for the person concerned becoming summoned for his, at the time specified in the orders, and, in the summons, hence attending the Court for his giving his specimen signatures or handwritings.

“311A- Power of Magistrate to order person to give specimen signatures or handwriting – If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceedings under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, 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 such order and shall give his specimen signatures or handwriting.”

4. A reading of the above extracted mandate, carried in Section

311 Cr.P.C., empowers the Judicial Magistrate concerned, to make the afore order, not only qua the accused but also with respect to any person, inasmuch as any person other than the accused, or at first glance even qua the victim-complainant. Though, the accused in compliance with the apposite order, did purvey, his specimen, and, admitted handwritings, before the Judicial Magistrate concerned. However, the direction, as, made upon the complainant(s)-victim(s) has remained un-complied with by the latter. The direction, as made upon the victims-complainants though at first glance falls within the ambit of the statutory phrase “any person”, hence existing in the substantive portion of the hereinabove extracted provision. However, on a deepest reading of the mandate, carried therein, especially of the coinage “any person other than the accused person”, it may not include the victim or the complainant, as the proviso occurring underneath, the substantive provisions as, carried in Section 311 Cr.P.C. rather regulates, and, governs the prior thereto substantive provision existing in Section (supra). Since the order within the ambit of the substantive provisions, cannot be made unless within the proviso the accused or the person concerned, has been arrested, in connection with such investigation or proceeding. Therefore, the apposite proviso, completely barred the learned Judicial Magistrate concerned, to make an order upon the complainants-victims, and, even upon the accused, as the accused, as unfolded by an order, as, made by this Court, on 19.12.2019 in CRM-M-54760-2019, became admitted to anticipatory bail. The consequence thereof is that, since within the ambit of the proviso, he did not come to be arrested, whereas, his becoming arrested in relation to the offence carried in the afore FIR (supra), which otherwise was non-bailable, and, also cognizable offence, rather was

a statutory necessity. Therefore, the afore affirmative order, as, made upon the application, moved by the investigating officer concerned, within the ambit of Section 311-A Cr.P.C., was not hence legally amenable to be pronounced by the learned Judicial Magistrate concerned. Contrarily, upon, breach of the bail conditions appertaining to the bail petitioner rather not rendering his cooperation, for the afore purpose, to the investigating officer, did empower the investigating officer concerned, to move an application for cancellation of bail, before the Court concerned, and, upon his arrest the application under Section 311-A Cr.P.C., became maintainable, as the accused had become an arrested person.

5. Be that as it may, though the complainants-victims are not coming forward to furnish their respective admitted specimen signatures hence for theirs, also being compared along with the disputed signatures, as, existing on the purportedly forged documents. Nonetheless, as stated above, the learned Judicial Magistrate concerned, may not proceed to hereafter, insist upon the complainant to make the afore specimen/admitted signatures, either before the investigating officer concerned, or before him/her. Contrarily, the investigating officer concerned, is directed to ensure the respective appearances, before him, of the victims-complainants, for theirs accompanying him, before the Executing Magistrate concerned, hence for theirs making before the latter, in his presence, their respective admitted, and, disputed signatures. In case the complainant(s)-victim(s), do(es) not adhere to the afore request, as, made upon them, by the investigating officer concerned, thereupon, it is open to the investigating officer concerned to, make appropriate mentioning(s) in his report, to be drawn under Section 173 Cr.P.C. However, he may thereafter proceed to send the already

collected specimen, and, admitted signatures of the accused, along with disputed signatures, as, purportedly made on the forged document(s), to the handwriting expert concerned.

6. The petition stands disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

March 10, 2022
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes



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