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Court : Mumbai Aurangabad

Decided On : Apr-29-2014

Judge : A.I.S. Cheema

Appeal No. : Criminal Revision Application No. 48 of 2014

Appellant : Dr. Suyog

Respondent : The State of Maharashtra and Another

Judgement :

1. This Revision Application has been filed by original Accused-Petitioner facing Sessions Case No.163 of 2009 pending before Additional Sessions Judge, Aurangabad. The Petitioner is facing offence punishable under Section 376, 328, 354 and 506 of the Indian Penal Code, 1860.

2. The evidence of Respondent No.2 (I have refrained to put her name, which is available in the original Petition) as PW3 was being recorded in the Sessions Case and in the course of cross-examination, a letter was put up to her. She declined that the same was in her handwriting. She was asked and she wrote out a passage to dictation of the Advocate for Petitioner-Accused and also put signatures in Marathi and English as she was asked. The Petitioner-Accused filed application Exhibit 26 and the Sessions Judge passed order that the disputed document Article A and the sample handwriting given by the prosecutrix Exhibit 24 and other admitted documents as mentioned in the order, be sent to the State

Examiner of Documents for opinion whether the handwriting made in disputed document Article A was of the same person who had written the documents Exhibit 24, 15, 18 and 21. Accordingly, the documents were sent. Subsequently, on 26th March, 2012 the handwriting expert sent letter to the Court stating that the sample handwriting sent was not enough and some more sample handwriting is necessary. The handwriting expert requested that the disputed handwriting should be encircled and concerned person should be asked to give sample handwriting as per the disputed document on six pages. The letter also requested that the natural Marathi and English handwriting of the person written in ordinary course should also be sent.

3. Letter of handwriting expert was endorsed by the trial Court on 27th March, 2012 directing Advocate for Petitioner-Accused to give say. After more than 1 and 1/2 year, on 4th December 2013 vide Exhibit 30, the Petitioner-Accused filed application requesting that the complainant (prosecutrix) should be called upon to complete requirement of handwriting expert.

It appears that the A.P.P. opposed mentioning that sufficient natural handwriting of complainant/victim has been provided and the victim has also filed her say and requested to send to Mumbai handwriting expert office and so there is no need to supply more natural handwriting.

The Sessions Court heard counsel for the Petitioner-Accused as well as the A.P.P. Earlier facts were referred and the order of the trial Court shows that the application filed by the Petitioner-Accused was objected by the victim on the ground that she has already provided sufficient writing to the handwriting expert for the opinion. Advocate for Petitioner-Accused however, insisted that as soon as the earlier application Exhibit 26 was allowed, the victim was under obligation to provide her handwriting to comply the said order. The A.P.P. opposed by stating that sufficient handwriting was available for opinion. It was also claimed that the matter was in the middle of cross-examination of prosecutrix who was coming from Solapur to attend the case. The A.P.P. also claimed that it was not necessary to have opinion of the handwriting expert on Article A at the concerned stage. The A.P.P. claimed that progress of the prosecution case cannot be withheld.

The Additional Sessions Judge considered rival submissions and observed that victim is not ready to comply requirements of handwriting expert and victim cannot be forced to comply the same. It was observed that the effect of the same, if any, can be considered while passing final order and thus the application did not sustain in the eye of law. The application came to be rejected and the trial was directed to proceed. The victim-prosecutrix was directed to attend on next date for further cross-examination.

4. Against such order, present Revision has been filed. It was argued on behalf of the Petitioner-Accused that when application Exhibit 26 to send the documents to handwriting expert was allowed, it had attained finality and so Respondent No.2-prosecutrix could not refuse to give further sample handwriting. It is argued that the requirement was of the handwriting expert and not the Petitioner-Accused. It is submitted that under Section 73 of the Indian Evidence Act, the Court can direct the prosecutrix to give her sample handwriting. Reference was made to Section 311A of the Code of Criminal Procedure to submit that the Magistrate had power to direct a person to give specimen signature or handwriting. Counsel for Petitioner-Accused relied on the case of **M. Narayanaswami vs. Yangatanna, reported in A.I.R. 1975 Andhra Pradesh, Page 88(1)**, to submit that as per Section 73 of the Indian Evidence Act, Court has ample powers to direct a person to even appear and give specimen handwriting and signature.

5. Learned A.P.P. for Respondent No.1 and learned counsel for Respondent No.2 opposed the Petition.

6. Respondent No.2 has filed affidavit-in-reply contending that the Petition is not maintainable. The order concerned is interlocutory and Revision does not lie. According to Respondent No.2, the earlier order was obviously passed as Respondent No.2 had agreed to the same and wrote down contents on the papers as were dictated by the Advocate of the Petitioner-Accused in the Court Hall itself. Respondent No.2 contends in the affidavit-in-reply that comparison of two scripts is artistry and even a signature of a person can suffice and thus according to Respondent No.2, it was unnecessary exercise and so on subsequent occasion she refrained from giving any handwriting. It is claimed that it is not imperative by

any law to provide more handwriting and it is not a case of documentary evidence where disproved document will vitiate the proceedings. The charge levelled against the Petitioner-Accused is of sexual offences and F.I.R. came to be filed on 22nd October, 2005. The evidence of Respondent No.2 started on 9th January, 2012, after about seven years of the incident. Respondent No.2 claimed that she was working in London when trial commenced, but she could not extend her contract due to present proceedings and has been suffering irreparable loss to her academic and professional career. She claimed that she is resident of Solapur and it takes seven hours to reach Aurangabad and Petitioner-Accused has been deliberately delaying proceedings. Her age-old parents are also required to accompany her on each date. Respondent No.2 contended that the earlier Advocate for Petitioner-Accused who started cross examination, got himself discharged and the present Advocate filed Vakalatnama taking signatures of more than 12 Advocates on the Vakalatnama, so that they could remain present in the Court while her evidence was being recorded In-camera.

As per Respondent No.2, such practice is highly immoral, unethical, condemnable and needs to be deprecated. Respondent No.2 referred to Roznama to show how the matter was being protracted. It is claimed by Respondent No.2 that the Petitioner-Accused wants to protract trial and is resorting to tactics to humiliate, so as to refrain her from deposing against him. It is claimed that unhealthy ambiance was created in Court causing great agony and hardship to victim.

7. It has been argued for the Respondents that the prosecutrix had already co-operated and complied requirements as per Section 73 of the Indian Evidence Act. Trial Court has rightly observed that the witness could not be compelled to give further sample handwriting. The learned A.P.P. submitted that the trial Court has rightly observed that if the prosecutrix is not giving any further sample handwriting, what is the effect, would be matter for consideration at the time of passing final order.

8. In reply, learned counsel for the Petitioner-Accused stated that although the Petitioner-Accused has filed Revision, he has also relied on Article 227 of the Constitution of India and so the present Petition is maintainable.

9. I have gone through the record. There is copy of the first information report, which shows that the prosecutrix was studying for higher education and was residing at Rahuri. The Petitioner-Accused used to attend the college on Saturdays to teach Research and Statistics and so was known to the prosecutrix. First Information Report refers as to how on 8th December, 2004 prosecutrix had gone to Aurangabad to get the notes from the Petitioner-Accused. First Information Report states that on 4th August, 2005 prosecutrix was at Solapur, there was phone call and Petitioner-Accused asked her to come to Aurangabad to watch C.D. and Demo. Case is that on 5th August, 2005 prosecutrix came to Aurangabad and went to the home of the Petitioner-Accused. Then the incident attracting the Sections of Indian Penal Code referred above, appears to have taken place at home of the Petitioner-Accused. Prosecutrix has given evidence in this regard. If the copy of the evidence is perused, it can be seen that cross examination started on 9th January, 2012. It was continued on 17th January, 2012 when just a few questions were asked. It resumed on 18th January, 2012. On that day prosecutrix was shown one envelope showing address of the Petitioner-Accused. She accepted that the address written on the envelope, as put in circle A, was in her handwriting but address shown in circle B, she stated was not in her handwriting. The envelope was marked Exhibit 21. The evidence was deferred. It continued on 6th February, 2012. In course of cross examination, she was shown letter containing eight pages and other documents Exhibit 18 and 19 were shown. She accepted her signatures on Exhibit 18 and 19. As prosecutrix had shown willingness to give her handwriting in presence of the Court, counsel for Petitioner-Accused gave her dictation and she wrote down the same and put her signatures in Marathi and English on the document which was marked Exhibit 24. The evidence was again deferred and taken up on 22nd February, 2012 when prosecutrix was confronted with the letter Article A. She denied that it was in her handwriting, or that she had sent the same to the Petitioner-Accused. It appears that the Petitioner-Accused then suggested to Respondent No.2-prosecutrix that she has intentionally attempted to point out her different handwriting while writing Exhibit 24, compared to Article A. The suggestion was denied. Still, it appears that the Petitioner-Accused applied vide Exhibit 26 and the Court sent the documents for comparison.

10. I have seen xerox copy of the document Article A and the passage which was written down by the prosecutrix, Exhibit 24. Respondent No.2 voluntarily wrote down more than 14 lines and wrote down 3 different dates as well as her sample signatures in English as well as in Marathi. In spite of this, it is surprising that the State Examiner of Documents at Aurangabad, wanted more sample handwriting and signatures. In fact the letter of State Examiner appears to be saying that the prosecutrix should write down 6 pages as in the disputed document Article A. Respondent No.2 appears to be right in her stand that sufficient sample handwriting and signatures were available. The prosecutrix has declined to give further sample handwriting. The trial Court has rightly observed that she cannot be forced and what is the effect, would be matter of consideration at the stage of final order.

11. The argument of the learned counsel for Petitioner-Accused is that under Section 73 of the Indian Evidence Act the Court could direct the prosecutrix to give writing in compliance of the requirement of the handwriting expert. Section 73 of the Indian Evidence Act, reads as under:-

73. Comparison of signature, writing or seal with others admitted or proved. “ In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.?

12. If the above Section is perused, it is clear from the First Part that in order to ascertain whether a writing is of the person by whom it purports to have been written, any signature or writing which has been admitted or proved to the satisfaction of the Court to have been written or made by that person, may be compared with the one which is to be proved. Second Part of the Section gives

power to the Court to direct any person present in Court to write any words or figures? for the purpose of enabling the Court to compare the words or figures. Thus, Section 73 of the Indian Evidence Act is to enable the Court to compare and to that end Court can ask the person to write any words or figures. Although how many words or figures is not prescribed, it has to be reasonable. It does not mean that long passages and pages as is being sought, could be asked to be written down. Still, the Respondent No.2-prosecutrix did give sample handwriting in a long passage as well as her signatures with different dates.

13. The other argument that under Section 311A of the Code of Criminal Procedure, 1973, the Magistrate can ask any person to give specimen signatures or handwriting, is misplaced. Section 311A of the Code of Criminal Procedure, reads as under:-

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 proceeding 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.

Provided 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.?

14. Perusal of the above Section makes it clear, specially the Proviso, that it relates to the power of the Magistrate to direct any person including an accused person to give specimen signatures or handwriting, if it is considered expedient for the purpose of investigation or proceeding, provided, the person concerned had at some time been arrested in connection with the investigation or proceedings concerned. It is pertinent to note that Respondent No.2-prosecutrix is not an accused nor a person who was arrested in connection with investigation or proceeding concerned. Section 311A of the Code of Criminal Procedure does not apply to the facts of the present matter.

15. There is no substance in the present Revision Application. It cannot be said that the impugned order is not correct, not legal or not proper.

16. If the case of the prosecution as is appearing from the record is kept in view and the cross examination recorded till now is perused, it can be seen that when in the first place Exhibit 26 was accepted and order was passed to send Article A for comparison, it was done as in the cross examination, Respondent No.2 agreed to give the handwriting. The Additional Sessions Judge does not appear to have recorded below Exhibit 26 the relevance of the document for deciding the trial. Affidavit-in-reply of the Respondent No.2 claims that she is being harassed in the Court and that there are attempts to deliberately delay the proceedings. She claims that she is being humiliated and harassed by putting scandalous questions and banter. Keeping such affidavit-in-reply in view, when her evidence already recorded is perused, it does appear that the provisions of Section 136 of the Indian Evidence Act are not being followed by the trial Court. At the stage of cross examination, although so much of cross examination has been done in five sittings, still the cross examination does not appear to have yet touched the incident in dispute dated 5th August, 2005. As per Chapter X of the Indian Evidence Act, 1872, there are various provisions which cast duty on the Court to ensure that the cross examination of witness does not become a tool for harassing the prosecutrix. The prosecutrix has filed copy of Vakalatnama Exhibit 17, which shows so many Advocates to have signed the Vakalatnama. It is the contention of the prosecutrix in her affidavit-in-reply, in Para 8, that this has been done so that all those Advocates who are more than 12 can attend the Court while recording her evidence In-Camera. She has claimed that only the Advocate conducting the trial should be permitted to sit in the Court.

17. Before this Court, argument of learned counsel for Respondent No.2 that unhealthy ambiance is tried to be created in the Court Hall at the time of evidence by letting so many Advocates attend only because they have signed Vakalatnama, has not been replied to by the learned counsel for Petitioner-Accused. The Additional Sessions Judge needs to keep in view provisions of Section 327(2) of the Code of Criminal Procedure, 1973, which has been inserted in 1983, providing that the inquiry into or trial of rape or offence under Section 376, Section 376 A to

376 E of the Indian Penal Code shall be conducted In-Camera. The purpose and object of the law needs to be kept in view and it is necessary for the trial Court to ensure that In-Camera proceeding takes place in its letter and spirit. When it is In-Camera proceeding, it is duty of Court to ensure that Prosecutrix is given atmosphere which will encourage her to speak about the incident without being put to avoidable embarrassment. The evidence can be recorded in presence of both sides, permitting the counsel conducting the cross examination to have assistance of say, one junior Advocate only of his choice.

18. The trial Court is directed to keep in view specific requirement of law under Section 309 of the Code of Criminal procedure, 1973, which requires that enquiry or trial relating to offence under Section 376 of the Indian Penal Code shall, as far as possible be completed within period of two months from the date of filing of the chargesheet. In such matters, Adjournments granted need to be justified from record, which does not appear to be the case in present matter when Roznama is perused.

19. For the reasons mentioned above, there is no substance in the present Revision Application.

The Revision Application is rejected with costs of Rs.3000/- (Rupees Three Thousand), to be paid to Respondent No.2.

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