

Sandeep Dixit Vs State

Court: Delhi High Court

Date of Decision: April 27, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 227, 293, 397, 401, 482

Evidence Act, 1872 â€” Section 45

Penal Code, 1860 (IPC) â€” Section 120B, 466, 468, 469, 471

Citation: (2013) 1 AD 407 : (2012) 190 DLT 600

Hon'ble Judges: M.L. Mehta, J

Bench: Single Bench

Advocate: Anurag Jain, for the Appellant; Fizani Husain, APP., for the Respondent

Final Decision: Allowed

Judgement

M.L. Mehta, J.

This is a criminal revision petition u/s 397/401 Cr.P.C. read with Section 482 Cr.P.C. assailing the order dated

15.02.2011 passed by the Id. ASJ whereby the revision petition filed by the State against the order passed by Id. ACMM, discharging the

petitioner in FIR No. 176/2001 registered at P.S. Keshav Puram u/s 468/469/471/120B IPC, was allowed and it was ordered that charges be

framed against the petitioner u/s 466 IPC. The present case was registered on the basis of complaint dated 18.10.1999 made by Mr. Neeraj

Bharti, SDM, Rajouri Garden stating that he had received a complaint from Ms. Rekha Chauhan (accused No. 1 in the charge sheet) that Sanjay

Kumar Malik (accused No. 2 in the charge sheet) had submitted two affidavits dated 19.07.1999 with forged signatures of SDM, Rajouri Garden

for the purpose of solemnization of their marriage. It was stated in the complaint that the SDM had seen the photocopies of the affidavits and

certified that the signatures on the two affidavits were not his. It was alleged that the affidavits were produced before the priest of Arya Samaj

Mandir and relying upon them, the marriage of Ms. Rekha Chauhan and Sanjay Kumar Malik was performed by him. As per the prosecution, the

marriage register from the temple and the said forged affidavits were seized by the police and specimen signatures of various persons including the

present petitioner were obtained for expert opinion and as per the report of GEQD Hyderabad, it was established that on the aforesaid affidavits,

the words ""Signed before me"" and date ""19.07.1999"" were in the hand writing of the present petitioner. Charge sheet was filed against the above

mentioned two accused persons along with the petitioner.

2. The Id. ACMM while discharging all the three accused persons opined that the charges against them were groundless and there was not even

remote possibility of conviction of the accused persons. Again this order the State went in revision and the learned ASJ maintained the impugned

order qua the accused Rekha Chauhan and Sanjay Kumar Malik, but reversed the findings of the learned ACMM qua the present petitioner and

while allowing the revision petition ordered the framing of charges u/s 466 IPC against the petitioner. The order of the learned ASJ has been

challenged by way of present petition.

3. The impugned order has been challenged on the ground that the learned ASJ has gravely erred in not appreciating the fact that there is no

material against the petitioner for framing of charge u/s 466 IPC and has erred in interfering with a well reasoned and speaking order of discharge

passed by the learned ACMM after due scrutiny of material brought on record by the prosecution. It has been submitted that the learned ASJ has

gravely erred in not appreciating the fact that the learned trial Court had rightly observed that the report of an expert u/s 45 of the Indian Evidence

Act is merely an opinion and not a conclusive proof of the validity of the handwriting in question. It has been further argued that even if on the basis

of the GEQD report, any doubt was raised regarding the involvement of the petitioner in the alleged offence, still in the event of two possible views,

the one favouring the accused should have been accepted. Reliance has been placed on Dilawar Balu Kurane Vs. State of Maharashtra,

4. On the other hand the learned APP for the State has submitted that the contention of the petitioner that there was no material against him for

framing of charge is contrary to the facts on record in the light of the GEQD report which specifically mentioned that on the affidavit the words

Signed before me"" and the date ""19.07.1999"" were in the handwriting of the petitioner herein. Consequently, it has been argued that the instant

Revision Petition deserves to be dismissed.

5. I have heard the rival submissions and perused the record as well as the impugned order and the order of the learned ACMM discharging the

three accused persons. As the findings of the learned ACMM qua the accused No. 1 and 2 i.e. Rekha Chauhan and Sanjay Kumar Malik have

not been controverted vide the impugned order, I would now proceed to examine the findings of both the courts below qua the present petitioner

only.

6. There is no allegation that the signatures of SDM were forged, but that the handwriting of above words was not that of SDM and was of the

petitioner. From the perusal of the order of learned ACMM it is evident that the complaint was registered on the basis of complaint of SDM

Rajouri Garden based on the photocopy of the affidavits shown to him, without showing him the originals of the said affidavits. More so, there is no

explanation as to on what basis the case came to be registered without showing the originals of the two affidavits to the SDM when the

investigating agency had claimed in the charge-sheet that the originals of the said affidavits were seized from the priest who solemnized the

marriage. As per the investigating agency it has drawn its conclusion regarding the culpability of the accused on the basis of the opinion of the

handwriting expert. But, it is pertinent to note that the specimen handwriting and signature of SDM were not obtained and sent for expert opinion

to find out whether the affidavits were actually bearing his writing and signatures or not. Not only that, no attempt was made to get compared the

signatures of SDM with the disputed signatures on affidavits, even the disputed signatures were not got compared with that of the petitioner. In

such a situation, it is difficult to imagine that how it came to be concluded by the investigating agency without the examination of the handwriting and

signatures of the SDM which were in contention.

7. It has been submitted that the specimen handwriting of the petitioner were obtained during the course of investigation and sent to GEQD

Hyderabad, along with the aforesaid affidavits for expert opinion. It has been averred that the words ""Signed before me"" and the date

19.07.1999"" have been opined by the handwriting expert to be in the handwriting of the present petitioner. Admittedly, there is no independent

witness of the prosecution who had seen the petitioner signing the said affidavits. It is settled proposition of law that expert opinion is not a

conclusive proof of the validity of the handwriting or document in question in the absence of any independent corroboration. The report of

handwriting expert is not included in the list of documents which can be accepted as valid evidence without examining the author as per the scheme

of Section 293 Cr.P.C. Even otherwise, the said specimen handwriting of the petitioner was obtained without the permission of the Court by the

investigating agency. In Ram Chandra and Another Vs. State of Uttar Pradesh, it is observed that ""the expert evidence as to handwriting is opinion

evidence and it can rarely, if ever, take the place of substantive evidence. In Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee

since deceased and after him his legal representatives and Others, it is observed that acting on such evidence it is usual to see if it is corroborated

either by clear, direct or by circumstantial evidence. In State of Gujarat v. Vinaya Chandra Chhota Lal Pathi Criminal Appeal No. 43 of 1964, it is

held that "a court is competent to compare disputed writings of a person with others which are admitted or proved to be his writings. It may not be

safe for a court to record a finding about a person's writing in certain document merely on the basis of comparison, but a court can itself compare

the writings in order to appreciate properly the other evidence produced before it in that regard. The opinion of handwriting expert is also relevant

in view of Section 45 of the Evidence Act but that too is not conclusive. It has also been held that the sole evidence of a handwriting expert is not

normally sufficient for recording a definite finding about the writing being of a certain person or not.

8. Hence I am in agreement with the contention of the learned counsel for the petitioner that the learned ASJ has gravely erred in not appreciating

the fact that the opinion of an expert u/s 45 of the Indian Evidence Act is merely an opinion and not a conclusive proof of the validity of the

handwriting in question and the learned ASJ exceeded its jurisdiction by ordering the framing of charge against the petitioner merely on the report

of the GEQD without corroboration.

9. Assuming that the learned ASJ was in two minds regarding the culpability of the petitioner due to the opinion of the handwriting expert, still the

view favouring the accused should have been adopted in the light of settled legal proposition. It is one of the golden principles of criminal law that if

after appreciation of evidence on record, the Court finds the possibility of two equally good views, the one favouring the accused is to be

accepted. In Dilawar Balu Kurane (supra) the Hon"ble Supreme Court followed the ratio laid down in The State of Gujarat Vs. Manshankar

Prabhashankar Dwivedi and Vallabhdas Gordhandas Thakkar, and observed that

by and large if two view are equally possible and the judge is satisfied that the evidence produced before him gave rise to some suspicion, but not

grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction u/s 227 Cr. P.C., the judge

cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the

evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the

evidence as if he was conducting a trial.

10. In the light of the above observations, I am of the opinion that in the light of serious lapses on the part of prosecution and absence of any

clinching material on record to link the petitioner with the alleged offence, the order of learned ASJ directing the framing of charges against the

petitioner u/s 466 IPC was untenable and unjustified. Consequently the petition is hereby allowed and the impugned order of the learned ASJ is set

aside.