

**IN THE HIGH COURT OF JHARKHAND AT RANCHI****Cr.M.P. No. 506 of 2021**

Sujit Dey @ Sujit Kumar Dey, aged about 54 years, son of Late Kashinath Dey, resident of Rajganj, P.O. & P.S. Rajganj, District- Dhanbad

... **Petitioner**

**-Versus-**

The State of Jharkhand through A.C.B.

... **Opposite Party**

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**PRESENT**

**HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioner : Mr. Dilip Kumar Chakraverty, Advocate  
For the State : Mr. Suraj Verma, Spl. P.P.

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**C.A.V. on 03.08.2021**

**Pronounced on 10.08.2021**

Heard Mr. Dilip Kumar Chakraverty, learned counsel for the petitioner, and Mr. Suraj Verma, learned Spl. P.P. for the opposite party-State.

**2.** This criminal miscellaneous petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard on merit.

**3.** This criminal miscellaneous petition has been filed for quashing the order dated 08.02.2021 passed by learned District Judge-II-cum-Special Judge, (A.C.B.), Dhanbad in Special Case No.15 of 2012, arising out of Vigilance P.S. Case No.15 of 2012, whereby, the learned court without giving opportunity to cross examine the expert exhibited the report given by the Forensic Science Laboratory, Jharkhand, Ranchi and allowed the petition dated 20.03.2020 under Section 293 of the Cr.P.C.

**4.** The case of the prosecution is that one Sanjay Kumar Singh had complained to the S.P. Vigilance, Ranchi stating therein that he is having

land in the name of his grandmother in Rangamati, Police Station Baliapur, District- Dhanbad. After selling 20-25 decimals of land, he went to the Circle Office for giving rent of remaining land, which was due since last 18 years and meet with the Halka Karamchari, then Halka Karamchari had given advise to go and file an application before the Circle Officer, thereafter, the Circle Officer sent application to Halka Karamchari (petitioner). Again complainant visited the office of Halka Karamchari, who demanded Rs.15,000/- from the complainant. The complainant made request that he is not able to pay such huge amount. The complainant, namely, Sanjay Kumar Singh had complained to the S.P. Vigilance, Ranchi. After receiving the aforesaid complaint, the Police Inspector for verification went along with complainant to the Revenue Office of Shitalpur on 07.07.2012 by hiding his identity and again in front of Police Inspector, the petitioner demanded Rs.15,000/- from the complainant and thereafter the First Informant Report was lodged.

**5.** Mr. Dilip Kumar Chakraverty, learned counsel for the petitioner submitted that the petitioner is innocent. The petitioner was working as Halka Karamchari in the Revenue Office at Shitalpur. He further submitted that on 23.01.2019, a petition under Section 311 of the Cr.P.C. has been filed by the prosecution for examination of Deputy Superintendent of Police, A.C.B., namely, Nawal Kishore Prasad, which has been allowed vide order dated 22.11.2019. The argument in the case was already completed on 02.03.2020 and the case is fixed for pronouncement of judgment. Mr. Chakraverty, learned counsel for the petitioner further submitted that charge-sheet was submitted on 08.09.2012 without report of chemical examination of Forensic Science Laboratory, Jharkhand, Ranchi. The prosecution has filed a petition on 20.03.2020 under Section 293 of the

Cr.P.C. to mark exhibit of result of chemical examination of Forensic Science Laboratory, Jharkhand, Ranchi, which has been allowed by the impugned order dated 08.02.2021 without giving any opportunity of defence to the petitioner. Mr. Chakraverty, learned counsel for the petitioner relied upon Sub-section (3) of Section 293 of the Cr.P.C. and submitted that in view of this provision, the petitioner was required to be provided an opportunity of cross examination, which has not been allowed and for that the petitioner has been prejudiced. He further relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Keshav Dutt v. State of Haryana***, reported in **(2010) 9 SCC 286** and submitted that this case is also arising out of the same section and the Hon'ble Supreme Court has directed to allow the accused to cross-examine the expert.

**6.** Paragraphs 16, 17 and 18 of the said judgment are quoted herein below:

**"16.** *We are afraid that we cannot concur with the views either of the trial court or of the High Court in the above regard. When the trial court chose to rely on the report of the handwriting expert (Ext. PR), it ought to have examined the handwriting expert in order to give an opportunity to the appellant and the other accused to cross-examine the said expert. There is nothing on record to show that the appellant and the other respondents had admitted to the report of the handwriting expert.*

**17.** *In our view, the trial court ought to have allowed the appellant an opportunity to cross-examine the expert and both the trial court and the High Court erred in denying him such opportunity and shifting the onus on the accused to disprove Ext. PR which had not been formally proved by the prosecution. The decision cited on behalf of the appellant regarding reliance on the opinion of an expert who had not been examined as a witness, however, includes an Assistant Director of the State Forensic Science Laboratory in clause (e) of sub-section (4) of Section 293 CrPC.*

**18.** *Section 293(4)(e), which is relevant for our purpose is extracted below:*

*"293. Reports of certain government scientific experts.  
—(1) Any document purporting to be a report under the hand of a government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other*

*proceeding under this Code.*

*(2)-(3) \* \* \**

*(4) This section applies to the following Government scientific experts, namely—*

*(a)-(d) \* \* \**

*(e) The Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;*

*(f) \* \* \*"*

**7.** On the other hand, Mr. Suraj Verma, learned Spl. P.P. for the opposite party-State submitted that there is no illegality in the impugned order and the trial court has rightly passed the order. He further submitted that chemical examination of Forensic Science Laboratory, Jharkhand, Ranchi was already on the record, which was only required to be marked and for that a petition was filed. He also submitted that there is no need for providing cross-examination to the defence in light of Sub-section (4) of Section 293 of the Cr.P.C. He relied upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Rajesh Kumar and another v. State Government of NCT of Delhi***, reported in ***(2008) 4 SCC 493***.

**8.** Paragraph 9 of the said judgment is quoted herein below:

*"9. A bare reading of sub-sections (1) and (2) of Section 293 shows that it is not obligatory that an expert who furnishes his opinion on the scientific issue of the chemical examination of substance, should be of necessity made to depose in proceedings before the court. This aspect has been highlighted by this Court in *Ukha Kolhe v. State of Maharashtra* and *Bhupinder Singh v. State of Punjab*. Therefore, there is no substance in the revision petition so far as the conviction is concerned."*

**9.** By way of relying on this judgment, Mr. Suraj Verma, learned Spl. P.P. submitted that in the case of the petitioner, there is no question of examination of handwriting expert and only chemical examination was required and in that view of the matter, the trial court has rightly passed the impugned order.

**10.** On perusal of the impugned order, it transpires that the case record was running at the stage of judgment on the petition dated 20.03.2020,

filed by the prosecution under Section 293 of the Cr.P.C. for exhibiting the result of chemical examination of Forensic Science Laboratory, Jharkhand, Ranchi. For correct appreciation, Section 293 of the Cr.P.C. is incorporated hereunder:

**" 293. Reports of certain Government scientific experts.**

*(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.*

*(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject- matter of his report.*

*(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.*

*(4) This section applies to the following Government scientific experts, namely:-*

*(a) any Chemical Examiner or Assistant Chemical Examiner to Government;*

*(b) the Chief Inspector of- Explosives;*

*(c) the Director of the Finger Print Bureau;*

*(d) the Director, Haffkeine Institute, Bombay;*

*(e) the Director, Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;*

*(f) the Serologist to the Government."*

**11.** In the case of the petitioner, the substance of chemical examination of Forensic Science Laboratory, Jharkhand, Ranchi was already on the record and only for exhibiting the same, the petition was filed. Thus, Sub-sections (1) and (2) of Section 293 of the Cr.P.C. are not obligatory that an expert, who furnishes his opinion on the scientific issue, it should be necessitated that he may depose in the proceeding before the court and this has been held by the Hon'ble Supreme Court in the case of Rajesh Kumar and another (*supra*). The trial court has also relied upon the said judgment rendered in the case of Rajesh Kumar and another.

**12.** In the judgment relied by Mr. Dilip Kumar Chakraverty, learned counsel for the petitioner in the case of Keshav Dutt (*supra*), the Hon'ble Supreme Court has clearly observed in paragraph 19 of the said judgment that it is only the report of handwriting expert, which connects the appellant of that case and that is why the prayer for cross-examination was allowed by the Hon'ble Supreme Court. In the case in hand, there is no question of handwriting expert. The report of Forensic Science Laboratory, Jharkhand, Ranchi, which was already on record, was only required to be considered. Thus, the judgment relied by Mr. Chakraverty, learned counsel for the petitioner is not helping the petitioner.

**13.** The report of the Forensic Science Laboratory, Jharkhand, Ranchi are admissible in terms of Section 293 of the Cr.P.C. There is no illegality in the impugned order dated 08.02.2021 passed by learned District Judge-II-cum-Special Judge, (A.C.B.), Dhanbad in Special Case No.15 of 2012, arising out of Vigilance P.S. Case No.15 of 2012.

**14.** Accordingly, this criminal miscellaneous petition stands dismissed.

**(Sanjay Kumar Dwivedi, J.)**