

CR No.7961 of 2011 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.7961 of 2011 (O&M)

Date of decision:20.01.2015

Davinder

...Petitioner

Versus

Ram Bhaj Mor

...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Suvneet Sharma, Advocate,
for the petitioner.

Mr. Vikram Singh, Advocate,
for the respondent

Rakesh Kumar Jain, J.

The respondent filed the suit for possession by way of specific performance of the agreement to sell dated 23.02.2000 against the petitioner who has alleged in his defence that some land was purchased by his father which was to be mutated in his name and the respondent had promised to get the land mutated in his name and on that pretext got his signatures on the blank papers and converted them into the agreement to sell. He had alleged that the said agreement to sell is a forged document and denied the receipt of any earnest money.

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The petitioner also filed an application under Section 156 (3) of the Code of Criminal Procedure, 1973 (here-in-after referred to as the “Cr.P.C.”) for registration of a criminal case against the respondent for commission of offence punishable under Sections 420, 467, 468, 471, 506 read with Section 120-B of the Indian Penal Code, 1860 on the ground that the respondent Ram Bhaj Mor had forged the document in connivance with Parmod Singh. An FIR bearing No.207 dated 24.02.2009 was initially registered at Police Station Civil Lines, Karnal on the basis of a complaint made by the petitioner. During the course of investigation, the petitioner also produced on record voice of the respondent recorded in a Compact Disk (CD) containing conversation of the petitioner with the respondent in which the respondent had admitted forgery of the papers in respect of agreement to sell. He requested the police to send the said CD to the Forensic Laboratory to authenticate the recording in which the respondent had admitted the forgery but the police authorities, after some investigation, filed cancellation report on 11.05.2009.

After notice from the Court regarding cancellation of FIR, the petitioner filed a protest petition on 28.08.2009 in which the trial Court issued summons to the respondent vide order dated 04.09.2009 to face the trial but despite the said summoning order, the police filed the Calendra under Section 182 of the Cr.P.C. against the petitioner for instituting a false criminal case against which the petitioner filed Criminal Miscellaneous No.4707-M of 2010 which is still pending in this Court for adjudication and in which stay has been granted for further proceedings in the trial Court. It

is also alleged that during the course of hearing in the Civil Suit, statement of the plaintiff was also recorded. After the summoning order dated 04.09.2009, one application filed by the respondent for staying the trial till the decision of the Civil Suit was dismissed and the second application filed by the petitioner for forensic analysis of the CD was allowed. However, in the meantime, the respondent had filed Revision Petition to challenge the summoning order dated 04.09.2009 which was allowed by the Additional Sessions Judge, Karnal on 18.08.2010. The said order dismissing the protest petition and setting aside the summoning order dated 04.09.2009 has been challenged by the petitioner by filing Criminal Revision No.3333 of 2010 which has been ordered to be heard along Criminal Miscellaneous No.4707-M of 2010.

In the meanwhile, the petitioner filed an application under Section 151 of the Code of Civil Procedure, 1908 (here-in-after referred to as the "CPC") before the Civil Court for recording voice sample of the respondent so that it could be compared with the recording in the CD which he had produced and was sealed by the Court of Chief Judicial Magistrate, Karnal in the criminal proceedings. The said application, however, has been dismissed by the impugned order dated 02.12.2011 and hence, the present revision petition.

Learned counsel for the petitioner has argued that the Court has ample powers under Section 151 of the CPC to ask the respondent to give his voice sample for the purpose of comparison with the voice recorded in the CD in order to unearth the truth. In this regard, he has relied upon a

judgment of the Kerala High Court in the case of **Sathya Raj v. Jayaprakash**, 2008(3) KLJ 630 besides a judgment of this Court in the case of **Sher Singh v. Jangir Kaur and others**, 1990(1) R.C.R. (Rent) 532.

On the other hand, counsel for the respondent has argued that the said CD cannot be used against the respondent as the seal of the parcel, in which the CD was kept, was found broken. It is submitted by him that the CD was not produced in the Civil Court despite the fact that the petitioner had appeared on 10.04.2008 and filed his written statement.

I have heard learned counsel for the parties and perused the available record with their able assistance.

The only question involved in this case is as to whether the petitioner can ask for voice sample of the respondent for the purpose of comparison with his voice recorded in the CD in which he allegedly admitted the forgery of the agreement to sell.

There is no doubt that the Court has inherent powers under Section 151 of the CPC which could be exercised for the purpose of finding the truth and as argued by learned counsel for the petitioner, in view of Section 75(c) of the Indian Evidence Act, 1872, the Court can always order for scientific investigation but in this case, the CD which was originally sealed by the order of the Chief Judicial Magistrate, Karnal vide order dated 04.09.2009, was found unsealed when it was produced in the Civil Court in the cross-examination of the respondent.

Once the seal of the said CD has been found to be broken even if it was in the custody of the Court, it cannot be used to the detriment of the

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respondent because it could have been interpolated or forged. In this regard, the judgment of the Bombay High Court relied upon by learned counsel for the respondent in the case of **Lalji s/o Bansanarayan Choubey v. Jiyalal Chavan**, 2010(5) R.C.R. (Criminal) 721 is applicable because in that case, it was held that if the tape recorded conversation is neither sealed nor produced in the Court immediately, it is not admissible in evidence.

In view of the aforesaid discussion, the present revision petition is found to be without any merit and hence, the same is hereby dismissed.

January 20, 2015
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(**Rakesh Kumar Jain**)
Judge