

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

CRM M-37676 of 2014

Date of decision : 12.03.2015

Rakesh Kumar

....Petitioner

V/s

State of Haryana

....Respondent

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. J.S. Mehndiratta, Advocate for the petitioner.

Mr. Vikas Malik, DAG Haryana.

RAJAN GUPTA J.

Petitioner has impugned order dated 29.09.2014 passed by Additional Sessions Judge, Yamuna Nagar whereby his request to send a compact disc (CD) to CFSL, Chandigarh for comparison of voice recording of the complainant has been rejected.

Learned counsel for the petitioner has assailed the order. According to him, in view of denial of opportunity to send the CD for comparison of voice recording, miscarriage of justice has occurred. The accused has a right to produce all relevant material in his defence. Thus, impugned order deserves to be set-aside. He has relied upon judgment reported as *Lior Avi Ben Moyal vs. Narcotics Control Bureau, Chandigarh 2009(4) RCR (Criminal) 762*.

Prayer has been opposed by learned State counsel. According to him, petitioner was caught red handed while accepting bribe. A trap was, thus, laid. On search of his pocket ₹2100/- was recovered which included the amount paid as bribe. He was, thus, booked for offences under section 7 and 13 of the Prevention of

Corruption Act, 1988. He further contends that petitioner is trying to build up his defence during the pendency of trial by recording conversations. He cannot be permitted to make the same part of evidence.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

Prosecution story in brief is that a young-man in police uniform was present at Ledi chowk, Yamuna Nagar and was demanding bribe of ₹300/- from every trolley loaded with sand/crushed stone. This information reached the Deputy Superintendent of Police. He formed a team and a decoy customer namely Vinod Kumar was given three notes of ₹100/- each. Deputy Superintendent of Police, Ashok Kumar appended his initial "AK" on these notes. Vinod Kumar was asked to sit on the trolley loaded with sand. Petitioner who was in uniform signaled the tractor-trolley to stop at Ledi chowk and demanded ₹300/-. Vinod Kumar handed-over the amount to the petitioner whereafter he was caught by the raiding party. On interrogation, he disclosed his name as Rakesh Kumar posted as a Daroga at Forest Department, Chhachhrauli. On search of his pocket ₹2100/- were recovered including three currency notes bearing initials "AK" of DSP Ashok Kumar. After completion of investigation, final report was submitted by the investigating agency on 06.02.2012 and accused was charge-sheeted on 11.06.2012. Complainant also deposed before the court. During his cross-examination, he was confronted by recording a compact disc. Stand of the petitioner is that said compact disc was also sent to CFSL but complainant failed to

appear before the court thereafter. On 08.09.2014, statement of accused under section 313 Cr.P.C. was recorded. At that stage, instant application was moved on behalf of the accused praying that a audio CD be sent to CFSL, Chandigarh for comparison of voice recording of complainant Vinod Kumar dated 09.10.2012 with the sample already available with the laboratory. This prayer was rejected by the court below on the ground that alleged conversation between complainant and brother of the accused had taken place during the pendency of the trial. Thus, same could not be considered by the court. There had been no investigation whatsoever regarding said C.D. Besides, section 91 was not attracted as application was not moved by any officer incharge of the police station nor court required production of any such material. I find no infirmity with the order passed by the trial court. It is inexplicable how section 91 would be attracted in the facts and circumstances of the case. Admittedly, conversation relied upon by petitioner took place on 09.10.2012 while report under section 173 Cr.P.C. had been submitted by the investigating agency on 06.02.2012. The case is at the stage of defence evidence now. Needless to observe that trial court would decide the matter on the basis of evidence that comes before it. Extraneous material which is sought to be brought on record at this stage would only delay the proceedings. Judgment in *Lior Avi Ben Moyal's* case (supra) cannot help the case of the petitioner as facts of the said case are totally different. There is no merit in the petition. Dismissed.

March 12, 2015

Ajay

(RAJAN GUPTA)
JUDGE