

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

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CrI. Misc. No. M 42338 of 2014

Date of decision: 19.02.2015

Ishwar Dayal

..... Petitioner

Versus

State of Haryana

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. S S Dinarpur, Advocate
for the petitioner

Mr. Rajesh Gaur, Additional A G, Haryana
For the State of Haryana

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

By invoking Section 482 of the Code of Criminal Procedure (in short, 'Cr.P.C.'), the petitioner has prayed for issuance of direction to the Additional Sessions Judge, Jagadhri to allow the petitioner to cross examine Naresh Kumar, retired Sub Inspector (PW20) in respect of contents of Compact Disc (in short, 'CD') by displaying it in the Court.

Counsel for the petitioner contends that FIR No. 120 dated 18.10.2011 was registered in Police Station Sadar Jagadhri, District Yamuna Nagar for offence punishable under Sections 302, 120-B, 201, 176, 202 read with Section 34 of the Indian Penal Code and Section 25 of the Arms Act in regard to murder of Sarla Devi and Pinkoo at the instance of

Manoj Kumar son of late Jagmal Singh.

On completion of investigation, the police submitted report under Section 173 Cr.P.C against Manoj Kumar alias Moji son of late Prithvi Singh, Nirmal alias Kala son of Ishwar Dayal, Virender alias Swami son of Rajbir Singh, Narender alias Monu son of Chunni Lal and Ishwar Dayal, Sarpanch (petitioner herein). The petitioner has been charged for committing offence punishable under Section 120-B of the Indian Penal Code. It is argued that the petitioner has been implicated in the crime as he openly criticised the police of the concerned Police Station holding them responsible for murder of two innocent ladies at the hands of co-accused Manoj son of late Prithvi Singh. The media persons of the local news channel videographed the episode and telecast the same at the local news channel. The 'CD' was prepared by the media persons which was put by counsel for the petitioner to Naresh Kumar, the then Sub Inspector (PW20). It is argued that the learned trial Court committed a grave error and in an illegal manner scuttled right of the petitioner to confront the witness with contents of the 'CD', to be proved to establish his innocence and false implication due to protest against the police and accusing them to be responsible for the murders. It is further argued that a serious prejudice would be caused to the petitioner in case he is not permitted to cross examine the witness in respect of contents of the 'CD' by displaying it in the Court. In support of his contention, he has relied upon judgment of this Court ***Lior Avi Ben Moyal v. Narcotics Control Bureau, Chandigarh, 2009(4) R.C.R. (Criminal) 762.***

Counsel for the respondent State of Haryana, on the contrary, has submitted that as there is no evidence on record to prove authenticity of

contents of the 'CD', the trial Court has rightly rejected prayer of the petitioner to put contents of the 'CD' to the witness. It is further argued that 'CD' was neither prepared by the investigating agency nor the alleged recorded conversation pertains to Naresh Kumar (PW20). The petitioner shall always be at liberty to establish authenticity of the 'CD' and prove its contents, in accordance with law, in defence.

I have heard counsel for the parties and perused the records.

Naresh Kumar (PW20), retired Sub Inspector was posted as Station House Officer, Police Station Jagadhri on 18.10.2011, the date the alleged occurrence in regard to murder of Smt. Sarla and Pinkoo took place and FIR No. 120 dated 18.10.2011 was registered in Police Station Sadar Jagadhri. Perusal of testimony of the witness (Annexure P3) would make it evident that the witness was cross examined at length and his further cross examination was deferred on 29.09.2014. The witness was confronted with the factum of Iswhar Dayal (petitioner) raising protest and criticizing the police including the Deputy Superintendent of Police and he (the petitioner) having been arrested by him (witness) at the spot on that day, which was denied. He has also denied that any such episode was videographed by media persons and its telecast on local news channel. However, he admitted that from the news paper, it was revealed to him that Ishwar Dayal had criticised the police at the spot. The defence counsel wanted to put the 'CD' to the witness but he denied his knowledge about the same.

The learned trial Court disallowed any question regarding 'CD' with the observations that he (witness) has denied knowledge of the same and authenticity of the 'CD' is also in question. The request made by defence counsel to play the 'CD' and cross examine the witness in regard to

its contents was also declined but the 'CD' was allowed to be placed on record and marked as D1.

Counsel for the petitioner placed on record the documents Annexures P4 and P5 i.e. transcript of conversation recorded in the 'CD' (Annexure P4) and photographs (Annexure P5). Annexure P4, conversation recorded in the 'CD' appears to be dialogue between the reporter and Sarpanch and Naresh Kumar, PW20 is not a party to such conversation. Once Naresh Kumar is not a party to conversation recorded in the 'CD' allegedly prepared by the media persons, I do not find merit in the contention of the petitioner that he should be given an opportunity to display recorded conversation and confront Naresh Kumar in regard thereto.

Annexure P5 pertains to certain photographs allegedly clicked at the spot by the media persons wherein photograph of the petitioner (accused) and Naresh Kumar is stated to be there. The petitioner shall be at liberty to confront Naresh Kumar with the photographs captured in the 'CD' marked D1, in exercise of his right to fair trial, subject however that authenticity and evidentiary value of the photographs shall be appreciated by the trial Court.

To be fair with the petitioner, the judgment relied upon by counsel has no bearing on the facts of the case in hand. In the referred authority, conversation between witness Ravi Kant Pawar and the accused recorded in the 'CD' was put to the witness and he denied his voice. A request was made by the accused that Ravi Kant Pawar may be directed to give his voice sample for the purpose of comparison with recorded conversation which was declined by the trial Court. The petition was allowed by this Court with the observations that denial of opportunity to

lead evidence or to curtail this right may mean denial of fair trial. The Courts have always been zealously guarding the rights of accused person so as to ensure that there is no breach of any of such rights guaranteed to any person, accused of offence. The conversation as recorded on the Video tape cannot be said to be so unconcerned as to not affect the opinion of the Court as to the credibility of those witnesses.

As has been noticed hereinabove, conversation recorded in the 'CD' in question does not pertain to the witness, therefore, the petitioner cannot take any advantage to his contention from what has been held in *Lior Avi Ben Moyal's* case supra.

In view of what has been discussed here-in-above, the petition is partly allowed, the petitioner is allowed an opportunity to confront Naresh Kumar, PW20, with photographs recorded in the 'CD' in question. The trial Court shall ensure that part of the 'CD' containing photographs is displayed in the Court to enable the petitioner to put the photographs to the witness.

Disposed of accordingly.

(Rekha Mittal)
Judge

19.02.2015
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