

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

**CR No.5281 of 2015
Decided on: 18.11.2016**

Ramesh KumarPetitioner

Versus

Karambir Singh and anotherRespondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Sushil Jain, Advocate for the petitioner.

Mr. Navneet Singh, Advocate for respondent No.1.

REKHA MITTAL, J.

The present petition directs challenge against order dated 10.07.2015 (Annexure P5) passed by the Civil Judge (Jr. Division), Sonapat whereby application filed by the petitioner for comparison of voice of respondent No.1 has been dismissed.

Counsel for the petitioner has submitted that the respondent – plaintiff has filed a suit for specific performance of an agreement of sale dated 04.03.2010 in regard to land measuring 12 kanals 1 marla situated in village Asawarpur Tehsil and District Sonapat. The petitioner and his brother filed the written statement and in turn, denied execution of agreement to sell with the plea that the agreement does not bear their thumb-impressions and the same is forged, fictitious and has been prepared fraudulently by the plaintiff in collusion with his henchmen. The petitioner filed the instant application for comparison/verification of the voice recorded in the CD alleging that Santosh wife of defendant – Ramesh had telephonic conversation with Karambir – plaintiff wherein she demanded the papers from said Karambir and Karambir had stated that the papers have been sent to

Chandigarh for loan purpose. The conversation took place on 24.03.2010 and if proved would substantiate plea of the petitioner – defendant that the respondent – plaintiff has committed a fraud by fabricating agreement to sell. It is further argued that the respondent – plaintiff is an accused in various FIRs lodged in District Sonapat sufficient to show that he is indulging in criminal activities by committing fraud and forgery.

Counsel for the respondent – plaintiff, on the contrary, has supported the impugned order with the submissions that the parties have already adduced evidence in support of their respective contentions and the present application was filed at the fag end of the trial with an intent to delay the proceedings. It is further argued that as per averments raised in the application, the alleged conversation was recorded on 24.03.2010 but the suit was instituted by the respondent – plaintiff in September, 2010 and no such fact with regard to recording of any such conversation was revealed either in the pleadings or during course of trial.

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

Before advertng to the submissions made by counsel for the parties it is pertinent to mention that counsel for the petitioner has referred to certain judgments ***“All India Anna Dravida Munnetra Kazhagam vs L.K. Tripathi and others”***, 2009(2) RCR (Criminal) 658 (SC), ***“Ram Media Limited vs Dhanraj Singh”***, 2009(2) Law Herald 1276 (P&H), ***“Dial Singh vs Rajpal and others”***, 1969 PLR 519

(P&H), “*Essaki Ammal @ Chitra vs Veerabhadra @ Kumar*”, 2012(4) CTC 743 (Madras High Court) pertaining to evidentiary value of tape recorded version and the precautions to be taken while appreciating admissibility of tape recorded version for the purpose of evidence. In *Ram Media Limited's case (supra)*, a suit for specific performance was filed by the plaintiff who has alleged that defendant No.1 demanded additional amount in a meeting and pleaded recording of conversation in the plaint as well as replication. This Court held that permitting voice comparison would not amount to reopening of evidence by the plaintiff and the trial Court was directed to get the specimen voice of defendant No.1 and 10 and get the same compared with the original digital recorder as well as CD at expense of plaintiff.

Reverting to the case at hand, admittedly there is no reference to any such conversation between wife of the petitioner and the respondent – plaintiff or recording of such conversation much less placing the CD (Compact Disc) on record either at the time of filing of the written statement or during course of evidence. Perusal of the written statement filed by the defendants would make it evident that they have altogether denied execution of the agreement to sell with a categorical plea that agreement does not bear thumb-impressions of the defendants. No such plea was raised by the defendants that their thumb-impressions were obtained on blank papers for the purpose of securing any loan to be obtained by the defendants. On a pointed query raised by the Court, counsel for the petitioner has fairly informed that no such recorded conversation was put to the plaintiff in his cross-examination.

Counsel for the petitioner has made a vain attempt to argue that as conversation took place between wife of the petitioner and the respondent – plaintiff that was recorded in the CD, wife of the petitioner did not disclose the said fact to the petitioner and for that reason, the petitioner and his brother could not plead the factum of conversation or its recording. The plea of the petitioner in this regard is highly mis-conceived and merits outright rejection. Firstly, it is difficult to accept to reason that if wife of the petitioner had recorded conversation, she would not disclose the said fact to the petitioner despite the respondent having filed a suit for specific performance of contract dated 04.03.2010. This apart, no such plea has been raised in the application dated 13.02.2015 that the petitioner was not aware of the said recording prior to filing of the application, admittedly filed after the parties have already adduce their evidence. Counsel for the petitioner is not even sure if wife of the petitioner has been examined as a witness. Analyzed from any angle, no fault can be found in the order impugned warranting intervention in exercise of supervisory jurisdiction of this Court. In this view of the matter, the petitioner cannot derive any advantage to his contentions from the referred authorities.

For the foregoing reasons, the petition fails and is accordingly dismissed. No order as to costs.

18.11.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No