

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M No.11428 of 2016 (O&M)
Date of decision : 04.04.2016

Vishav Singh Parmar

.....Petitioner(s)

Versus

State of U.T. Chandigarh

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. K.S. Dhillon, Advocate
for the petitioner.

ANITA CHAUDHRY, J.

The petitioner has assailed the order dated 05.03.2016 passed by the Additional Sessions Judge in FIR No.21 dated 12.01.2015, registered under Section 376, 420 IPC, P.S. Sector 26, Chandigarh. The petitioner sought recall of the prosecution witness for further cross-examination. That plea has been rejected by the trial Court.

The petitioner is facing trial for administering intoxicant to the prosecutrix and in an un-conscious condition, she was raped. The complainant had made allegations that the accused convinced her and wanted to marry her and the 'Roka' ceremony was held but thereafter, she learnt that he was having relations with other woman and a complaint was lodged. The accused apologized and promised not to repeat. The relationship continued and the wedding date was fixed but the boy side later on refused.

The police had challaned and had filed the charge-sheet. Charge was framed and the prosecution had closed its entire evidence and the case was fixed for defence evidence when an application was moved by the defence seeking recall of the complainant. The plea raised therein was that the accused had received a telephone call on the mobile of Ankit who was known to the complainant and the call was made by the prosecutrix and she disclosed certain facts pertaining to the case and the case had been planted on the instigation of Hifazat Khan. It was pleaded that the conversation had been recorded by the accused on a mobile phone which had been transferred to a C.D. and they want to confront the prosecutrix with that conversation and therefore, she should be recalled for further cross-examination.

The trial Court after seeking reply of the State and after hearing both the sides rejected the application and para no.6 of the order reads as under:-

“In the light of the aforesaid legal position, it is required to be seen that whether recalling of prosecutrix for cross-examination is essential for just decision of the case. It is rightly contended by learned SSP for the State that the alleged conversation of CD is not the authenticated proof to prove the alleged conversation as no voice sample of the complainant as well as accused was taken by any expert and compared with the voice conversation recorded in CD. Therefore, I am of the considered opinion that if such kind of applications are allowed, it would open the pendora's boxes and there will no end to such applications.”

I have heard counsel for the petitioner.

The prosecutrix was examined some time in February, 2015. The prosecution had closed its case and thereafter, it was fixed for defence evidence. According to the petitioner a telephone call was received on the mobile phone of Ankit and it was revealed that the case had been lodged at the instance of Hifazat Khan and the conversation had been recorded and the accused wants to confront the prosecutrix with that. The trial Court had observed that the C.D. was not authenticated and no voice sample of the complainant and the accused had been compared and the application had been filed only to delay the proceedings.

Section 311 Cr.P.C. provides that the Court can allow any witness to be recalled, examined if his/her evidence appears to be essential for the just decision of the case.

It is also now necessary to notice the provisions contained in Section 65-A and 65-B of the Evidence Act, which are as under:-

"65A. Special provisions as to evidence relating to electronic record: *The contents of electronic records may be proved in accordance with the provisions of section 65B. Section 65B reads as follows:*

"65B. Admissibility of electronic records:

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or

production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: -

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer.

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether -

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or (c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose

during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, -

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by

means of any appropriate equipment.

Explanation: *For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process. These are the provisions under the Evidence Act relevant to the issue under discussion.....*

Section 65 of the IT Act refers to certain conditions which if complied only then the evidence can be looked into by the Court. No such certificate was appended. According to the accused, there is a recording on the mobile of Ankit wherein there is a conversation that the case had been planted at the behest of Hifazat Khan. It is for the defence to lead its evidence and prove that there was any conversation or an admission. Recall of the prosecutrix is not necessary. The application was rightly dismissed.

The petition is dismissed in limine.

04.04.2016
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(ANITA CHAUDHRY)
JUDGE