

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-31745 of 2015

.....

Date of decision:10.2.2016

Ishwar Singh

...Petitioner

v.

State of Haryana and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sunil Panwar, Advocate for the petitioner.

Mr. Brijesh Sharma, Assistant Advocate General, Haryana for
the respondent-State.

Mr. Rajesh Lamba, Advocate for respondent No.2.

None for respondents No.3 and 4.

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Inderjit Singh, J.

This second criminal miscellaneous petition has been filed by petitioner under Section 482 Cr.P.C. for setting aside the order dated 28.7.2014 (Annexure-P.3) passed by learned Additional Sessions Judge, Gurgaon, whereby the application (Annexure-P.1) moved by the petitioner under Section 311 Cr.P.C. was dismissed; for allowing the present petition and permitting examination of the witnesses (Nodal Officers of Bharti Airtel and IDEA), along with relevant record and to formally prove the electronic record of phone call details in terms of Section 65-B of the Indian Evidence Act, 1872.

Notice of motion was issued in this case.

Mr. Brijesh Sharma, learned Assistant Advocate General, Haryana has put in appearance on behalf of respondent No.1-State and Mr. Rajesh Lamba, learned Advocate has appeared for respondent No.2 and contested this petition. No one has appeared for respondents No.3 and 4.

I have heard learned counsel for the parties as well as learned Assistant Advocate General, Haryana for the respondent-State and have gone through the record.

From the record, I find that earlier the petition has been filed challenging this impugned order by the present petitioner vide Criminal Misc. No.M-32789 of 2014, which was decided by this Court on 21.4.2015. Learned counsel for the petitioner had withdrawn that petition without asking for any liberty to file a fresh one or giving any other ground. As per order dated 21.4.2015, learned counsel for the petitioner wished to withdraw that petition, which was dismissed as withdrawn as prayed for. It is also clear from the record that on that very day another petition i.e. Criminal Misc. No.M-23054 of 2014, challenging another order of the trial Court, was also decided, which has been allowed by this Court for re-examination of the Investigating Officer. Now after about four/five months, the petitioner has filed this second petition. No ground has been mentioned for filing the second petition except that the petitioner's counsel has withdrawn the petition without instructions. Nothing is there whether the petitioner has filed any application or any complaint against his Advocate for withdrawing the petition without his consent. The mere change of the

Advocate by the party is no ground to file the petition again. The same counsel argued other petition which has been allowed by this Court on the same day which shows that the counsel has not acted negligently and has taken the interest and has properly conducted the case. If the second petition is entertained without any good reasons, then there will be no end to the litigation. A party will file the petition and then withdraw and say that the counsel has withdrawn without his consent and again will file.

This is a second petition. When the counsel has been engaged by a party to conduct his case, then whatever decision counsel takes cannot be challenged in second proceedings unless some motive or gross negligence has been shown on the part of the counsel by withdrawing the petition. He has the authority as per 'Vakalatnama' given to him to withdraw the petition.

In view of the above discussion, I find that this second petition is not maintainable and the same is dismissed.

February 10, 2016.

(Inderjit Singh)
Judge

hsp