

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

**CR No. 606 of 2017
DECIDED ON: JANUARY 31, 2017**

SUBHASH

....PETITIONER

VERSUS

JATIN KUMAR & ORS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

JASPAL SINGH, J

Challenge in this revision petition is to the order dated January 18, 2017 (Annexure P-1) passed by learned Civil Judge (Sr. Division), Gurgaon whereby, an application moved by respondents No.1, 2 and 6, under Section 65 of the Indian Evidence Act (for short 'Act') for leading secondary evidence to prove Calandra in DDR No. 31 of 2004, under Sections 107/151 of the Code of Criminal Procedure (for short 'Code') registered at the instance of Sehdev and Subhash-petitioner against their father at Police Post Badshahpur within the jurisdiction of Police Station Sadar, Gurgaon, has been allowed; with further prayer for the acceptance of instant revision petition and dismissal of above-said application.

While assailing the impugned order dated January 18, 2017, it has

been argued with vehemence by learned counsel for the petitioner that the same is absolutely illegal, arbitrary and against the settled proposition of law. In fact, the trial Court has not considered that the application moved by respondents No.1, 2 and 6 is nothing but a sheer abuse of process of Court and the same is false and bogus and has been filed just to delay the disposal of suit. Concededly, respondents No.1, 2 and 6 closed their evidence on April 06, 2016 and the case was listed for rebuttal evidence, if any, and for arguments for April 18, 2016. It was only, thereafter, an application under Section 65 of the Act to prove the Calandra was filed. It was, thus to fill up the lacunae in the case, as well as to delay the disposal of suit. Moreover, trial Court has also failed to consider that the photocopies of the documents does not fall within the category of documents, which can be proved by way of secondary evidence. In this regard, learned counsel for the petitioner has placed reliance upon the judgments rendered in the cases of **Mukesh Kumar @ Motta vs. State of Haryana; 2011(1) RCR (Criminal) 675 (SC), Shiolalsing Gannusing Rajput vs. Shankar Motiram Nale; AIR 1984 Bombay 19, Badrunnisa Begum vs. Mohammoda Begum; 2001 (2) CCC 464 (AP) and U.Sree vs. U.Srinivas; 2013 (1) CCC 348 (SC).**

Learned counsel for the petitioner further contends that the trial Court also did not consider the settled proposition of law that secondary evidence, as a general rule is admissible only in the absence of primary evidence. If the original itself is found to be inadmissible through failure of the party who files it to prove it to be valid, the same party is not entitled to introduce secondary evidence of its contents. Accordingly, he prays for the setting aside of impugned order.

After bestowing due consideration to the various submissions made by learned counsel for the petitioner and scrutinizing the impugned order, this Court does not find any merit in the instant revision petition.

As far as the recording/registration of DDR No. 31 dated 16.05.2004 at the instance of petitioner and Sehdev against the father Ram Singh is concerned, it is not a disputed fact. It is also not in dispute that in pursuance of above-said DDR Ram Singh was arrested and put up behind the bars. The mere fact that original record pertaining to DDR No. 31, dated 16.05.2004 could not be produced in the court, as it has already been destroyed does not mean that the original record was not in existence. There must be an entry in the register maintained by the police or any other evidence with regard to the documents, which have been destroyed under Rules after the expiry of some period prescribed for it. In the case in hand, since the original record pertaining to DDR No. 31 dated 16.05.2004 has been destroyed, thus, in view of Section 65(c) of the Act, secondary evidence of the same is permissible. Otherwise, also documents sought to be proved by way of secondary evidence is an official one and would certainly throw light on the controversy in between the parties and would be helpful for its effective and proper adjudication.

Thus, this Court does not find any infirmity or illegality in the impugned order. As such it stands dismissed.

JANUARY 31, 2017
sham

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*