

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

**Crl. Misc. No.M-30074 of 2017
Date of Decision: 11.09.2017**

Amit @ Monu

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Dinesh Arora, Advocate
for the petitioner.

LISA GILL, J(Oral).

The petitioner is aggrieved of order dated 06.07.2016 (Annexure P-4), passed by the learned Additional Sessions Judge, Rohtak, whereby application moved by the petitioner under Section 45 & 45-A of the Indian Evidence Act, 1872 read with Section 46-A & 45-A of the Information Technology Act, has been dismissed.

The petitioner is an accused in FIR No. 118 dated 23.03.2014, under Sections 304-B, 120-B, 34 IPC, registered at Police Station Old Sabji Mandi, District Rohtak. An application (Annexure P-3) was preferred by the petitioner praying therein that the mobile phone of the petitioner containing Sim No. 9466673397 be sent for forensic examination to Forensic Sciences Laboratory, Madhuban for expert opinion to prove the conversations of the petitioner and his deceased-wife recorded in with the phone. This application was dismissed by the learned trial Court on the ground that such an exercise would be futile as there is no voice sample of the deceased to prove that the petitioner in-fact had the conversation as alleged on the relevant day with his wife.

Learned counsel for the petitioner vehemently argues that the deceased i.e. petitioner's wife was in-fact a psychiatric patient. She used to

take medicines as prescribed by the doctor. He seeks to prove on record the conversation between the petitioner and his wife on 22.03.2014 to indicate that the deceased was repeatedly asking for the said medicine, which was not available in the market.

This conversation, it is submitted was recorded in the mobile phone of the petitioner as mentioned above. A compact disc (CD) was prepared and exhibited as Mark-X during the recording of evidence of PW-Vijender. Therefore, the learned trial Court has wrongly dismissed the application. It is urged that the petitioner merely seeks to prove the genuineness of the device, therefore absence of the voice sample of the deceased is irrelevant.

I have heard learned counsel for the petitioner and have gone through the file with his able assistance.

Contentions on behalf of the petitioner that it is only the genuineness of the device which is sought to be proved, is in contradiction of the application (Annexure P-3) filed by the petitioner. The specific prayer in the application reads as under:-

“It is, therefore, prayed that mobile of applicant/accused containing SIM No. 9466673397 which is tendered herein an envelope may kindly be sent to SFL Madhuban in sealed cover for expert opinion to prove the conversation recorded in the phone. The applicant-accused is also ready to give his voice sample, if so directed, to prove his genuineness with the contents of conversation recorded in mobile referred to above in CD copy Mark-X. Copy of script is enclosed herewith.”

Moreover, even if it is accepted that the petitioner merely seeks to prove the genuineness of the device, the same is a futile exercise for the reason that even if the device is proved to be genuine, it cannot lead to the

automatic proof of the conversation between the petitioner and his wife as suggested by the learned counsel.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 06.07.2016 passed by the learned Additional Sessions Judge, Rohtak, which calls for interference by this Court in exercise of powers under Section 482 Cr.P.C.

Accordingly, this petition is dismissed.

11.09.2017

s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No