

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-35711 of 2016

.....

Date of decision:22.3.2017

Sunbir Singh and another

.....Petitioners

v.

State of Punjab

.....Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Gurpreet Singh Dhillon, Advocate for the petitioners.

Mr. Deep Singh, Assistant Advocate General, Punjab for
the respondent-State.

Mr. Kanwaljit Singh, Senior Advocate with Mr. Arman Midha,
Advocate for the complainant.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of the impugned order dated 15.9.2016 (Annexure-P.9) passed in case FIR No.34 dated 27.2.2013 registered for the offences under Sections 302, 307, 427, 506, 148 and 149 IPC and Sections 25 and 27 of the Arms Act at Police Station Mataur, District S.A.S. Nagar (Mohali) dismissing the application dated 27.1.2016 and application dated 4.3.2016 filed under Section 65-B of the Indian Evidence Act (hereinafter referred to as 'the Act') to prove Pen-drive containing the recording of the occurrence in defence evidence.

Notice of motion was issued in this case.

Mr. Deep Singh, learned Assistant Advocate General, Punjab has put in appearance on behalf of the respondent-State and Mr. Kanwaljit Singh, Senior Advocate assisted by Mr. Arman Midha, Advocate has appeared for the complainant and contested this petition.

I have heard learned counsel for the parties and learned State counsel and have gone through the record.

From the record, I find that two applications were filed during the pendency of the trial. One application dated 27.1.2016 has been filed by the applicant-accused Onkar Singh and Sunbir to prove the pen-drive containing the recording of the occurrence of the present case under Section 65-B of the Act. It was stated in that application that they are to examine Sanjiv Mehta, co-owner and resident of House No.283, Phase III-A, Mohali and Sumit Bajwa. The applicants want to prove the recording of the occurrence of the present case, which has been recorded by the CCTV camera, installed in front of the house of Sanjiv Mehta. At the time of examination of the said witness on 7.1.2016, the prosecution had raised objection that the conditions mentioned in Section 65-B of the Act, are to be satisfied, in relation to the information contained in the pen-drive, in the absence of the original recording. The Court below allowed their said objection and the witness of Sanjiv Mehta was disallowed to depose and place on record the recording in pen-drive, for want of the requirements of Section 65-B of the Act. The applicants again want to prove the recording in the pen-drive of the occurrence of the present case, satisfying the

conditions mentioned in Section 65-B of the Act. The affidavit containing the relevant certificates, issued by Sanjiv Mehta, the owner of the house and the recording, in whose presence the pen-drive was prepared, by copying the recording from the original CCTV recording system, have been annexed herewith. As such, a prayer had been made for allowing the said application.

Reply was filed by the respondent. The learned Sessions Judge vide the order dated 15.9.2016 dismissed the application. Another application was also filed by Onkar Singh and Sunbir to prove the recording of the occurrence of the present case in the Laptop of Sanjiv Mehta. Same facts as earlier stated in the application have been reiterated by the applicants. It is also stated that as the case was fixed for 4.3.2016, Sumit Bajwa visited Sanjiv Mehta, for requesting him to appear before the Court. In their conversation, Sanjiv Mehta revealed that he transferred the recording of the occurrence in his Laptop on 3.3.2013, from the original hard disc, but because of virus, that infected the Laptop, the files were not visible. The virus infected file dated 3.3.2013 is in Computer/Drive-D (Recovery)/Folder named 'Recycle Bin' and drive recovery. It is also stated that the process of operating the computer/Drive-D, to retrieve the information, has been stated, in the application. It is also averred that the Laptop was taken to a computer expert, who retrieved the file on 3.3.2016. This retrieved file is now placed on the Desktop of the Laptop. It is stated that in the hard disc, the file remained intact, unchanged, without any omission, deletion or tampering. Sanjiv Mehta told that the original hard

disc of the CCTV recording system is still operating at his house. However, the said hard disc can have the recording of only 30 days and thereafter, the rewriting/over writing takes place over the earlier recording. The applicants now want to prove the recording of the occurrence of the present case in the Laptop of Sanjiv Mehta.

The Court below after hearing the parties and going through the record found that as per the allegations on 27.2.2013 at about 8.00 p.m., all the accused, while being the members of an unlawful assembly, being armed with deadly weapons i.e. pistol .32 bore and pistol of .30 bore, entered into a criminal conspiracy, to commit murder of Amarpreet Singh Advocate and that, in pursuance of conspiracy, accused Dharminder Singh alias Gugni, committed murder, by intentionally causing the death of Amarpreet Singh Advocate, whereas accused Rajat Sharma attempted to commit murder of PW Gaganjot Singh, accused Sunil Bhanot alias Chhoti attempted to commit murder of PW Simarjit Singh and accused Jaswinder Singh alias Khatu attempted to commit murder of Manjit Singh complainant, by firing gun shots. Accused fired gun shots rashly and negligently, so as to endanger human life and personal safety of others. There are also accusations against the accused that on 27.2.2013, Onkar Singh, Sunbir Singh and Deepak Kaushal, destroyed the weapons of offence, with an intention to save themselves from legal punishment and that Jaswinder Singh committed mischief by causing damage to car of the value of more than ₹50/- etc. The Court below held that in the case, charges have been framed on 6.11.2013 and thereafter, the prosecution examined as many as

32 witnesses. The evidence of the prosecution was closed on 28.4.2015. Thereafter, statements of the accused under Section 313 Cr.P.C. were recorded and the defence evidence was led by the accused. Sanjiv Mehta witness was partly examined on 14.12.2015 as DW-5 and thereafter, partly examined on 6.1.2016. At the time of recording of his examination-in-chief, Sanjiv Mehta intended to prove the recording of the CCTV camera, which was objected by the Public Prosecutor vis-a-vis identification of the place of the recording and also about recording not being that of CCTV camera, the same being placed from pen drive. Then application dated 27.1.2016 was filed to prove the pen drive and to prove the occurrence recorded in the Laptop of Sanjiv Mehta DW-5. As per the order passed by the learned Sessions Judge, it is stated that earlier also an application was filed for recalling of the three prosecution witnesses to further confront them with the compact disc pen drive. In that application, it was stated that the pen drive containing the recording of the occurrence has been procured from a Policeman, who was member of the Investigating Team which fact was categorically denied by the prosecution and the clear stand of the prosecution was that no such pen drive had been prepared or taken into custody during the course of investigation. That application was dismissed. Now it is stated that the recording of the occurrence has been done in CCTV camera installed in front of house of Sanjiv Mehta DW-5. Sanjiv Mehta DW-5 while appearing as DW-5 in the examination-in-chief has no where stated about the information regarding the occurrence, to have been contained in the pen drive. Even in his affidavit, annexed with the

application, he had stated that the Police had taken the original hard disc, which is still operating with the CCTV camera. He also stated that the hard disc can have the recording of 30 days only and thereafter, rewriting and overwriting takes place. In these circumstances, the learned Sessions Judge held that as to how and in what manner this pen drive was prepared has not been disclosed in the application. He had stated in his examination-in-chief on 6.2.2016, that he had seen the recording of occurrence in the LCD, in the presence of police officials, which is contrary to the stand taken by the prosecution. The Court, therefore, held that the source and manner of preparing the pen drive as well as the recording contained in the Laptop is not shown beyond doubt. The original recording has not been produced. In the absence of the same, the source of pen drive as well as of recording transferred in Laptop, does not stand established. The Court below also held that the averments that the Computer Expert had assured of retrieval of the information from the hard disc of CCTV camera has also not come on the record so far.

A perusal of the impugned order passed by the learned Sessions Judge shows that this order is correct as per evidence on record and law. In no way, the impugned order can be held as illegal. A perusal of the record shows that earlier the case of the accused was that pen drive has been procured from a Policeman which fact has not been established and rather, contested by the prosecution that no such pen drive was prepared or any CCTV footage was taken into police possession etc. When the source from which the pen drive has been prepared is not established, the pen drive

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cannot be allowed to be proved on the record as evidence. The findings given by the learned Sessions Judge are correct as per evidence and law and do not require any interference from this Court and the same are upheld.

Finding no merit in the present petition, the same is dismissed.

March 22, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No