

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

Gurbakshish Singh**Petitioner**

Sukhwinder Kaur and another ...Respondents

Present: Mr. Amit Kumar Walia, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[2]. Brief facts of the case are that petitioner filed the aforesaid application in question with the allegations that CD Ex.P-2 contained oral conversation between respondent No.1 and Gurpreet Singh PW-2. The conversation was recorded in the mobile phone of Gurpreet Singh. The said conversation in the form of CD was tendered in evidence and objection was raised with regard to mode of proof of this CD. In view of this

permission was sought to get the voice sample of respondent No.1 compared with the voice contained in CD Ex.P-2.

[3]. In reply to the aforesaid application, respondent No.1 took specific stand that no such conversation has ever been taken place between PW-2 Gurpreet Singh and respondent No.1. The CD was claimed to be forged and fabricated. The contents of CD were denied altogether.

[4]. The Addl. District Judge, Sangrur dismissed the application on the ground that there was no certificate issued by PW-2 Gurpreet Singh in terms of Section 65-B(4) of The Indian Evidence Act (hereinafter to be referred as 'the Act'), identifying the electronic record containing the statement and describing the manner in which it is produced. The other contentions of Section 65-B(4) of the Act were conspicuously missing and the Addl. District Judge, Sangrur while dismissing the application proceeded to record the findings on the basis of precedents on the point of right to privacy as protected under Article 21 of the Constitution of India as well as Article 17 of International Covenant on Civil and Political Rights. The electronic record is not admissible unless it is accompanied by a certificate as contemplated under Section 65-B(4) of the Act.

[5]. I have considered the submissions made by learned

counsel for the petitioner.

[6]. The earlier view expressed by the Hon'ble Apex Court in **State (NCT of Delhi) vs. Navjot Sandhu alias Afsar Guru (2005) 11 SCC 600** has been diluted in case of **Anvar P.V. vs. P.K. Basheer and others, 2014((4) R.C.R. (Civil) 504**. The technical conditions were reinterpreted. The instrument has to be regular mechanism and has to be proved in regular use. The non-technical conditions to establish authenticity of electronic record in terms of Section 65-B(4) of the Act requires the production of a certificate by the person, who has received such audio version as in the present case i.e. the person with whom such electronic record was created and is restored. The electronic record cannot be led by way of secondary evidence, unless and until requirement of Section 65-B of the Act are satisfied. The CD has to be accompanied by a certificate in terms of Section 65-B of the Act obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record is inadmissible.

[7]. The aforesaid controversy was reiterated in **Harpal Singh @ Chhota vs. State of Punjab, 2016(4) R.C.R. (Criminal) 936** and it was held that in the absence of certificate under Section 65-B(4) of the Act, the secondary evidence on the basis of electronic record is inadmissible in law. The evidence

relating to electronic record being a special provision, the general law governing the issue of secondary evidence under Section 63 read with Section 65 of the Act would have to yield in front of this issue. The electronic record in the form of secondary evidence cannot be admitted in evidence unless and until requirement in terms of Section 65-B of the Act are satisfied.

[8]. Taking into consideration the aforesaid legal position as enumerated by the Hon'ble Apex Court in **Anvar P.V.** and **Harpal Singh @ Chhota's** cases (supra), the stress made by learned counsel for the petitioner in the judgment of Division Bench of this Court in **Darshan Singh vs. The District and Sessions Judge and another, 2012(4) SLR 32** is found to be on some different parameters and will not answer the controversy as involved in the present case.

[9]. For the reasons recorded hereinabove, I do not find any error of jurisdiction in the impugned order. This revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

July 26, 2018

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No