

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

**CR No. 8077 of 2018
DECIDED ON: NOVEMBER 29, 2018**

SOMBIR SANGWAN

.....PETITIONER

VERSUS

SANJAY KUMAR

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. R.A. Sheoran, Advocate
for the petitioner.

AVNEESH JHINGAN, J (ORAL)

The order dated 29.10.2018 passed by learned Additional Civil Judge (Sr. Division), Charkhi Dadri (hereinafter referred to as 'learned trial Court') dismissing the application seeking direction to take the voice sample of witness Surender, has been assailed by filing the present civil revision petition.

2. The respondent/plaintiff filed a suit for recovery of ₹ 8,71,000/- against the petitioner/defendant on the basis of pronote dated 19.02.2015. The Written statement was filed, the stand taken was that on 05.01.2016 an amount of ₹ 1,00,000/- was given to Surender on asking of respondent/plaintiff, yet the pronote was not cancelled. Surender was a witness to the pronote and also appeared as PW-3. The evidence of respondent/plaintiff has already been concluded and at that stage an application dated 15.02.2018 was filed seeking

direction to send the voice sample of Surender (PW-3), as it was claimed that conversation between the petitioner/defendant and the witness was recorded by the applicant in a CD. The said application was dismissed. Hence, the present civil revision petition.

3. Learned counsel for the petitioner/defendant contended that the trial Court erred in dismissing the application and there is no intention to delay the suit proceedings. Rather, the application was moved only when PW-3 denied that the amount was handed over to him on asking of respondent/plaintiff.

4. Learned trial Court dismissed the application stating that CD remained throughout with the petitioner/defendant and the possibility of fabrication to the CD cannot be ruled out. It was further stated that an application has been moved to send the voice sample of Surender, who is not a party to the suit. Further, the learned trial Court held that PW-3 has already been examined and also cross-examined by petitioner/defendant. The application has been moved only at the stage when the case was fixed for evidence of petitioner/defendant.

5. Even though the trial Court recorded that fabrication of CD cannot be ruled out, this itself cannot be a ground to dismiss the application. As with regard to verification of all the contents of CD, FSL report could be sought. The fact cannot be ignored that Surender is not a party to the suit, he was merely a witness produced. He has been examined and thereafter, has faced cross-examination at length by petitioner/defendant. The CD has been kept close to the chest by the petitioner/defendant and it is only when the case was fixed for

the evidence of petitioner/defendant, an application for sending voice sample of Surender has been moved. The entire endeavour is just to delay the proceedings.

6. No error is found in the impugned order dated 29.10.2018 passed by learned trial Court.

7. The present civil revision petition is dismissed.

NOVEMBER 29, 2018
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(AVNEESH JHINGAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>