

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

**Criminal Revision No.4261 of 2017 (O&M)
Date of Decision: September 05, 2018**

Seerat Kaur

.....PETITIONER(s).

VERSUS

State of Punjab

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. K.S. Sidhu, Advocate for
Mr. Sunny Saggar, Advocate
for the petitioner (s).

Mr. Ramandeep S. Sandhu, Sr. D.A.G., Punjab.

SURINDER GUPTA, J.

This is revision against the order dated 25.10.2017 passed by learned Sessions Judge, SAS Nagar, Mohali, whereby the application filed by the prosecution to prove the CCTV footage by way of secondary evidence was allowed.

Learned counsel for the petitioner has argued that along with the challan, prosecution has relied on two pen-drives containing record of CCTV footage out of which one pen-drive Ex.P1 when played in Court, was found containing the recording of 16.03.2017. The second pen-drive Ex.P2 was attempted to be played to see the recording contained in it but this pen-driver could not be inserted in the computer or lap-top due to melting of plastic covering of the pen-drive and its contents could not be displayed in the Court. The prosecution moved application to prove the contents of pen-

drive Ex.P2 by leading secondary evidence. It has been alleged in the application that at the time of taking into possession said pen-drives, one copy of original in the mechanical process was prepared, which is accurate copy of the original and was kept in the police file. Prosecution sought permission to prove CCTV footage of pen-drive Ex.P2 by leading secondary evidence.

The application was contested by the petitioner by filing reply. However, learned trial Court after hearing learned counsel for the parties, allowed the application with the observations as follows:-

“5. Perusal of the Court file reveals that the accused Seerat Kaur, is facing trial for the commission of murder of her husband Ekam Singh Dhillon. After framing of the charge, complainant Darshan Singh Dhillon, was examined in the Court on 18.8.2017. However, after recording of part examination-in-chief, his further examination-in-chief was deferred. It is pertinent to mention that during the recording of the examination-in-chief of the said witness two pen drives were produced and note had been given about the production of the pen drives from sealed envelope and the said pen drives were proved as Ex.P1 and Ex.P2 and further note had been given that an attempt was made to play the pen drive in open Court, but the same could not be played as the pen drive could not be inserted. Also, it was observed by the undersigned that there is no such damage caused to the pen drive but the shape of pen drive appears to have been changed, probably due to melting of the covering of the pen drive. But in any case, the pen drive could not be played in the Court. Even though, now it is submitted by the counsel for the accused that only one pen drive was prepared, but however, as evident from the notes as

given while recording of the statement of PW1, two pen drives have been received. Even the mentioning thereof has been made in the recovery memo dated 22.03.2017 which has been proved as Ex.PW1/L. The mention thereof has also been made in the report under section 173 Cr.P.C. As the pen drive which is already on the record was unable to be played, beyond the control of the prosecution, it cannot be said that it was on account of mischief of the prosecution that the said pen drive could not be played. However, since the pen drive is stated to be containing material evidence relating to the movement of Seerat Kaur, soon after the occurrence in question, for the just decision of the case, the said evidence is required to come on record. What is the evidentiary value of the pen drive, which is now intended to be produced, is a matter of appraisal, at a later stage. Thus, in the given circumstances, without prejudice to the rights of the parties to be adjudicated on merits, for just decision of the case, the application for secondary evidence is allowed subject to all just exceptions relating to the existence and the proof of source of the same. Accordingly, the application for leading secondary evidence is accepted subject to the aforesaid terms.”

Learned counsel for the petitioner has vehemently argued that only two pen drives of CCTV footage were prepared and were taken into possession by the police, so, there could not be any question of third pen-drive being prepared. Prosecution has not proved as to from where it got 3rd pen-drive which shows that it is a fabricated piece of evidence and no authenticity could not attached to it.

On giving a careful thought to the submission of learned counsel for the petitioner, I find that the same are misplaced. It is case of

prosecution that a copy of the pen-drive, which was produced in sealed covers was kept in police file. Pen-drive Ex.P2 could not be played in the Court due to the damage caused to it because of melting of its plastic cover. Learned trial Court has observed that pen-drive is containing material evidence relating to the movements of accused soon after the occurrence and the evidentiary value of the pen-drive will be seen at later stage. This has protected the right of the petitioner to make submission regarding the admissibility of the evidence.

The question which arise for consideration is as to what prejudice is going to be caused to the petitioner if the evidence already in possession of the police be allowed to be proved by way of secondary evidence. The original pen-drive could not be played in Court due to technical reasons and no prejudice will be caused to the petitioner if the copy of pen-drive subject to all legal exceptions is allowed to be produced in Court. Petitioner shall also have right to see the contents of the second pen drive and make submission in this regard.

In view of my above discussion, I find no merits in this petition and the same is dismissed.

Trial Court may also seek advice from technical expert to extract contents of pen-drive Ex.P2 or to play it.

September 05, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***