

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRR-472-2019 (O&M)
Date of Decision:-28.2.2019

Adish Kumar Jain

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Sandeep Kumar Passi, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

By way of filing this revision petition, the petitioner assails order dated 28.1.2019 passed by learned Additional Sessions Judge, Moga, whereby an application filed by him for sending the exhibited CDs to Forensic Science Laboratory to prove the genuineness/authenticity of the same, has been declined.

The CDs in question are stated to be containing CCTV footage allegedly recorded from camera installed outside the house of the petitioner. The trial Court has, however, declined the request mainly on the ground that the original digital video recorder, which is the primary source of recording from CCTV camera, has not been brought on record and nor is stated to be in possession of the accused.

I have heard the learned counsel for the petitioner.

The learned counsel for the petitioner has submitted that infact the digital video recorder had been taken into possession by the police and the entire recording made therein has been washed off and that in these circumstances, the petitioner is unable to produce the digital video recorder.

It is well established that any kind of digital evidence in the shape of a data retrieved from a computer/electronic equipment can only be admitted if it satisfies the conditions laid down in Section 65-B of Indian Evidence Act, which for the sake of ready reference read as follows:-

“65-B. Admissibility of electronic records:-

- (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.
- (2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:-
 - (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
 - (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
 - (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not

such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether:-

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say:-

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official

position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section:-

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- (c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.”

In the present case, the petitioner seeks to rely upon data recorded on a compact disc without there being any evidence regarding the source from which it has been recorded. In the absence of the said source i.e. the DVR and also evidence to the effect that the same was being maintained regularly and was not tampered with, the data recorded in the CD, may not be admissible.

During the course of arguments, the learned counsel for the petitioner has referred to a judgment of Hon’ble the Apex Court reported as 2016(1) R.C.R. (Criminal) 167 titled as Shamsher Singh Verma Versus State

of Haryana and has referred to paragraph No.16 of the same, which reads as follows:-

“

16. We are not inclined to go into the truthfulness of the conversation sought to be proved by the defence but, in the facts and circumstances of the case, as discussed above, we are of the view that the courts below have erred in law in not allowing the application of the defence to get played the compact disc relating to conversation between father of the victim and son and wife of the appellant regarding alleged property dispute. In our opinion, the courts below have erred in law in rejecting the application to play the compact disc in question to enable the public prosecutor to admit or deny, and to get it sent to the Forensic Science Laboratory, by the defence. The appellant is in jail and there appears to be no intention on his part to unnecessarily linger the trial, particularly when prosecution witnesses have been examined.

.....”

I have perused the cited judgment. In the cited case, the trial Court had refused to even play the CD in question, whereas the same is not the case in hand, wherein not only the CD has been exhibited but has also been played. However, the question as to whether the same is to be sent to FSL or not has to be examined in light of the fact as to whether the source from which the CD has originated is available or not. Since the DVR is not stated to be there, therefore, no purpose would be served by sending the CD to FSL. In these circumstances, this Court does not find any infirmity in the impugned order and the same is hereby upheld. There is no merit in this revision petition and the same is hereby dismissed.

28.2.2019

pankaj

Whether speaking /reasoned

Whether Reportable

Yes / No

Yes / No

(Gurvinder Singh Gill)
Judge