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

CR No.2817 of 2019

Date of Decision : 08.05.2019

Jatinder Singh

Petitioner

Versus

Manpreet Kaur and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Karan Garg, Advocate
for the petitioner.

AVNEESH JHINGAN, J (Oral)

Aggrieved of order dated 23.04.2019 passed by the Additional District Judge, Sangrur [hereinafter referred to as 'the Civil Court'] dismissing the application for seeking permission for comparing the voice of respondent No.1-wife with the voice recorded in mobile phone Ex.A-35 and voice in video in Pen Drive Ex.AX.

The facts in brief are that the petitioner-husband filed a petition under Section 13 of Hindu Marriage Act, 1955 on the grounds of cruelty and adultery. The petitioner had placed on record original mobile phone Ex.A-35 alleging that respondent No.1-wife was having adulterous talks with respondents No.2 to 4 (in this petition). A pen drive (Ex.AX) was also produced containing video in which respondent No.1-wife allegedly has given media interview against the petitioner. During the evidence of the petitioner, an application was moved

for comparing the voice of wife with the one recorded in the mobile phone and pen drive. The said application was dismissed on 31.10.2018 and order thereof was challenged in this Court in Civil Revision Petition No. 7731 of 2018. The said Civil Revision Petition was dismissed as withdrawn on 09.04.2019. The order is reproduced as under:-

“Learned counsel for the petitioner states that he may be permitted to withdraw the application as well as petition.

Dismissed as withdrawn.”

Even before the decision of the Civil Revision Petition, another application dated 26.03.2019 was moved making similar prayer but without disclosing that petitioner had challenged the order dated 31.10.2018 by filing the Civil Revision Petition. The application was dismissed by the Civil Court stating that earlier the application was filed making similar prayer was dismissed and the said order has attained finality. Aggrieved of the said order, the present Civil Revision Petition has been filed.

Learned counsel for the petitioner argues that the Civil Court has erred in dismissing the application as *res judicata* would not be applicable for the reasons that there is change in circumstances as the wife in her deposition stated that she has no objection if her voice sample is taken.

The contention raised by learned counsel for the petitioner lacks merit. The issue raised in the present petition

has already been decided by the Civil Court. The order was challenged in this Court by filing a Civil Revision Petition. Without waiting for outcome of the petition, another application seeking same relief was filed and Civil Revision Petition was withdrawn. No liberty was sought while withdrawing the petition. The contention that wife had herself offered voice sample is not well founded. From perusal of the statement it is evident that it was only during the cross-examination that answer was to a suggestion put to the wife, and rather she has specifically denied the suggestion that voice in the video is of her. It is not a case of change of circumstances rather petitioner is taking chances. In second application, the Civil Court was not informed about the petition filed before this Court whereas after making the other application the revision petition was simply withdrawn. The first application was moved when evidence of the petitioner-husband was going on. Similar prayer was made when wife had deposed. This itself does not give fresh cause of action to the petitioner.

The Civil Revision Petition is dismissed.

Needless to add that nothing stated herein would be construed as an expression of opinion on the merits of the case.

[AVNEESH JHINGAN]
JUDGE

May 08, 2019

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |