

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

**Crl. Misc. No. M-35770 of 2019 (O&M)
Date of decision: August 29, 2019**

Bittu

.. Petitioner

Versus

State of Punjab and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Divjyot S. Sandhu, Advocate
for the petitioner.

SURINDER GUPTA, J.(Oral)

The petitioner has challenged the order dated 16.07.2019 passed by Chief Judicial Magistrate, Kapurthala, whereby application of the prosecution seeking permission to prove a compact disk (CD) by way of secondary evidence was allowed.

As per case of the prosecution, original CD made from CCTV footage was taken into police possession vide recovery memo dated 27.11.2017 and was placed on record as EX. PC. At that time, two sets of C.D were prepared and one was taken into police possession and other was kept by the complainant. When the CD was ordered to be played, the same was found to be crack and application was moved to prove the contents of CD by way of secondary evidence.

Learned counsel for the petitioner submits that evidence of CD is not admissible. This CD was not made by expert and may be a doctored document. No certificate as required under Section 65-B of the Evidence

Act has been placed on file by the prosecution to prove the contents of CD.

This fact is not disputed that the compact disk produced in evidence has been found crack and could not be displayed. Learned trial Court has allowed permission to prove the contents of that compact disk by way of secondary evidence. As to whether this evidence is duly proved, admissible or relevant, is all together a different aspect to be seen while appreciating this evidence and allowing of application to prove content of a compact disk by way of secondary evidence does not mean that the evidence sought to be produced by way of secondary evidence is duly proved. The prosecution has to follow all the rigors as prescribed by law including the provision of Section 65-B of the Evidence Act as applicable to the facts of the case despite the fact that learned trial Court while allowing the application has taken note of the fact that original CD has been destroyed and the prosecution be allowed to prove the contents of that CD by way of secondary evidence.

On perusal of the order passed by the trial Court, I find no legal or factual infirmity therein calling for any interference. This appeal has no merits.

Dismissed.

August 29, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No