

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

-.-

Civil Revision No. 1028 of 2020

Date of decision: 24.02.2020

Om Parkash and others

.....Petitioners

Versus

Som Nath and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Gagandeep Singh Sirphikhi, Advocate
for the petitioners

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Rekha Mittal, J. (Oral)

Challenge in the petition has been directed against order dated 27.01.2020 (Annexure P7) passed by the Civil Judge (Junior Division), Derrabassi whereby application filed by the petitioners/plaintiffs for directing Malkeet Ram (DW4) to provide his voice sample for the purpose of comparing the same with conversation recorded by petitioner No. 4, purportedly taken place between petitioner No. 4 and Malikat Ram (DW4) has been rejected.

Counsel for the petitioners would argue that Malkeet Ram (DW4) was examined by the respondents/defendants to counter case of the petitioners/plaintiffs seeking declaration qua sale deed executed and registered on 30.05.2008 in favour of the respondents in respect of land measuring 02 bigha 09 biswa 18-3/4 biswasi being 1/16 share out of total

land measuring 39 bigha 19 biswa, detailed in head note of the plaint. It is further submitted that there was conversation between petitioner No. 4 and Malkeet Ram (DW4) wherein he admitted that the aforesaid sale deed was without sale consideration and the same was recorded in 'compact disc' (CD) mark PA. During cross examination of DW4, the recorded conversation was played in the Court and put to the witness but he denied the same. It is further argued that in order to arrive at a logical conclusion with regard to correctness of conversation recorded in CD, the instant application was filed for issuance of direction to Malkeet Ram (DW4) to give his voice sample but the same has wrongly been declined by the trial Court. It is argued that Malkeet Ram in his cross examination had stated that he was ready to give voice sample for the purpose of comparison. In support of his contention, he has relied upon judgment of the Andhra Pradesh High Court *Jagarlamudi Tirupathaiah vs Kolasani Subba Rao, 1983 (1) ALT 438*, wherein the Court has allowed recording of cross examination of PW2 in the Court for the purpose of comparison with the earlier recorded conversation, for testing the veracity or impeach credibility of the witness.

I have heard counsel for the petitioners, perused the paper book particularly the order impugned and the judgment cited at Bar.

Perusal of judgment relied upon by counsel makes it evident that there is no provision in the Code of Civil Procedure or Evidence Act that envisages taking voice sample of a witness for the purpose of comparison with record of conversation in CD. This apart, in para 56 of judgment, the Court has held that their Lordships of the Supreme Court

held that the petitioner has to establish that the voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who know it and the accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibility of tampering with the record and the subject matter recorded had to be relevant according to rules of relevancy found in the Evidence Act. Since no person or persons connected with the alleged recording of the tape is/are examined so far and brought the tape on record, it cannot be said that it is a former statement of PW2 and is evidence. Unless that is done, it cannot be said that the former statement contained in the tape can be used. In view of the facts in this case, the only course the lower Court would have adopted was to defer the cross examination of PW 2 till the evidence of the defendants is adduced regarding the tape. Order XVIII Rule (2) sub-rule (4) empowers it to adopt this course. It says that notwithstanding anything contained in this rule, the Court may, for reasons to be recorded, direct or permit any party to examine any witness at any stage.

In the case at hand, there is nothing on record suggestive of the fact that the tape recorded conversation which was put to DW4 has been proved in accordance with law with which DW4 could be confronted being previous statement made by him. In the given circumstances, there is no question of calling upon DW4 to give his voice sample for the purpose of comparison with the unproved tape recorded conversation. In this view of the matter, I do not find an error much less perversity in the impugned order

warranting intervention in exercise of extra-ordinary jurisdiction of the Court.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed *in limine*.

(Rekha Mittal)
Judge

24.02.2020
Mohan Bimbra

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No