

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 02.03.2020****CR No.1514 of 2020**

Raj Kumar

...Petitioner

Vs.

Neelam

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. J.P.Jangu, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

1. Plaintiff moved an application to the Family Court seeking permission to lead in evidence a Compact Disc (CD) allegedly containing electronic record of the conversation between 'his wife's father and his elder brother' and his 'wife and her father' regarding certain matters referred to in the application and the petition. The divorce petition is at the stage of final arguments. The divorce seeker is the petitioning husband.

2. Petitioner had contended before the Family Court that the alleged CD was not put to the respondent or her father during their cross-examinations. In any case, the electronic record is to be seen with limitations prescribed under Section 65-B of the Indian Evidence Act, 1872 introduced by way of an amendment by Act 21 of 2000. The call recordings were on the file in CD form, but could not be exhibited due to want of certificate under Section 65-B. At the time of closing the evidence, when the case was adjourned for arguments, the husband had simply tendered the alleged CD and closed his evidence after which the permission could not be granted to exhibit the document to be read in probative evidence. The learned Judge

has referred to the provisions of Order XVIII Rule 17-A CPC, which was deleted w.e.f. 01.07.2002, but yet has rightly observed that it is for the petitioner to show and satisfy the court that the proposed evidence was not known previously or despite due diligence it could not have been produced in evidence to be read or heard.

3. Admittedly, it is not the case of the petitioner that the proposed evidence was not in his knowledge at the time when he filed the present petition. It is also not the case of the petitioner that the proposed evidence could not have been produced despite due diligence. Though the petitioner had mentioned the existence of the CD in Para.9 of his petition, but he failed to take legal steps for its exhibition as evidence on record to be read in proof of facts contained therein. The trial Judge perused the order-sheets and found that issues were framed on 09.03.2017 and the petitioner took 15 dates thereafter to complete his evidence before closing it. The Family Court rightly observed that the petitioner cannot be permitted to exhibit the marked document on the ground that mandatory certificate could not have been fetched.

4 Above all, the petitioner did not care even to file any transcription of the proposed electronic evidence to assess and weigh its authenticity or relevancy for determining the controversy in the divorce petition with its help. The application was dismissed by the impugned order dated 17.02.2020 without commenting on the merits of the case. I find no error in the order warranting interference and would dismiss the petition.

02.03.2020
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes/No