

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

(125)

CRM-M-42724-2021 (O&M)
Date of Decision: 14.10.2021

Ashok Kumar Bakshi

... Petitioner

Versus

M/s Saini Traders and Another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Ms. Surabhi Kaushik, Advocate,
for the petitioner.

HARNARESH SINGH GILL, J.

By way of the present petition, the petitioner seeks quashing of the order dated 10.08.2021 (Annexure P-1) passed by learned Judicial Magistrate, 1st Class, Jagadhri, vide which two applications filed by the petitioner i.e. one for recording the voice samples of DW1-Ashwani Kumar and DW2-BP Mishra (respondent No.2) and another for recalling DW1-Ashwani Kumar to tender certificate under Section 65-B of the Indian Evidence Act, 1872 in support of telephonic conversation submitted in evidence by way of a compact disk (DW-1/B), have been dismissed.

Learned counsel for the petitioner submits that DW1-Ashwani Kumar, while tendering his affidavit along with a Compact Disk, averred therein that DW2-BP Mishra, had a conversation of 6 minutes and 14 seconds with him on

13.05.2017. However, while appearing in the witness box as DW-2, said BP Mishra, had denied his voice and expressed his willingness to give his voice sample. It is submitted that when the witness DW2 was ready to give his voice sample, dismissal of the application dated 05.02.2020 moved by the petitioner, by the trial Court is legally unjustified.

It is further submitted that while deciding the said application, the learned Magistrate has wrongly observed that no effort was ever made to prove the authenticity of the Compact Disk by producing a certificate under Section 65-B of the Indian Evidence Act.

It is yet further submitted that the petitioner had filed another application dated 27.02.2020, to recall the witness DW1-Ashwani Kumar so as to tender the requisite certificate under Section 65-B of the Indian Evidence Act. Thus, it is vehemently argued that even in view of the prayer made in the application dated 27.02.2020, the learned trial Court ought to have granted the prayer as the prayer made in the subsequent application dated 27.02.2020, would have covered the relief sought for in the previous application dated 05.02.2020.

In support of his contentions, learned counsel for the petitioner relies upon the judgment of Hon'ble Supreme Court in 'Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal and Others', (2020)7 SCC page 1.

After hearing learned counsel for the petitioner, I do not find any merit in the present petition.

Indisputably, it was the accused-petitioner, who had led evidence in defence. Therefore, while tendering evidence of DW1-Ashwani Kumar, the petitioner ought to have been conscious enough to produce the evidence as per the procedure established by law. If a Compact Disk was being relied upon, then before relying upon it, its authenticity ought to have been proved. However, the petitioner did not take any step in this regard and only filed another application to recall DW1-Ashwani Kumar, to produce the certificate that too after reply to the earlier application, was filed by the complainant.

As would appear from the impugned order passed by the trial Court, DW1-Ashwani Kumar was cross-examined on 05.02.2020, but the requisite certificate was not produced. On 22.01.2020, examination-in-chief of DW2-BP Mishra was recorded, wherein objection regarding the certificate under Section 65-B of the Indian Evidence Act, was raised and that it was only after the reply to the first application dated 05.02.2020, was filed by the complainant that the petitioner had filed the second application. The trial Court has rightly observed that the petitioner could not give any reason as to why the certificate regarding the authenticity of the Compact Disk could not be produced by the petitioner and that the inadvertence pleaded by the petitioner is solely with a view to filling in the lacunae.

It is a settled law that the parties cannot be allowed to learn from the events. If any of the litigating parties, is relying upon any evidence, then it must make endeavour to adduce the

same as per the procedure established by law and the cases cannot be allowed to linger on for an indefinite period on mere pretext of inadvertence.

In view of the above, the present petition is hereby dismissed.

14.10.2021

Aman Jain

(HARNARESH SINGH GILL)
JUDGE

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