

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.131 of 2021 (O&M)

Date of Decision: February 10, 2021

Amanpreet Kaur

.....Petitioner

versus

Kanwalvir Singh Kang and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Ms. Amanpreet Kaur, petitioner in person.

Ms. Munisha Gandhi, Sr. Advocate (Amicus) with
Ms. Manveen Narang, Advocate

Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Sudhir Sharma, Advocate
for respondent No. 1

Sudhir Mittal, J.

The husband-respondent has filed a petition for dissolution of the marriage under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'). The petition was filed in the year 2015 and is currently at the stage of final arguments. The present revision petition has been directed against order dated 29.01.2020 passed by the trial Court on an application dated 03.04.2019 filed by the wife-petitioner for sending a particular 'compact disk' to CFSL for comparison with File No. 140330-001 in compact disk on record as Ex. R-1/53.

2. Relevant undisputed facts are that after the petitioner left the matrimonial home (as alleged by respondent No. 1) a meeting took place between the parties in the presence of their relatives. The date on which it took place is disputed. The petitioner asserts that the same took place on 30.03.2014 whereas the respondent says that the date was 09.04.2014. Both, however, admit recording

the same. In a complaint made to the police at Patiala by the petitioner, respondent No. 1 was asked to get his statement recorded. The statement was recorded on 28.07.2014 wherein respondent No. 1 has *inter alia* stated that the compromise meeting took place on 09.04.2014 and the same was recorded by him. The recording contained in a compact disk was handed over along with the statement. During the course of evidence of respondent No. 1, the file pertaining to the inquiry conducted by the Patiala police was summoned. The police witness got his statement recorded as PW-3 on 27.03.2018. He also produced the compact disk handed over by respondent No. 1 at the time of recording of statement dated 28.07.2014. The said compact disk was exhibited but by orders of even date the same was de-exhibited with liberty to the petitioner to summon the same when her evidence was recorded. During the course of recording of her evidence, the petitioner placed on record Ex. R-1/53 a compact disk containing recordings of the compromise meeting referred to hereinabove. Thereafter, the file pertaining to the police inquiry conducted by the Patiala police was summoned and was produced by an official who deposed as RW-8 on 03.04.2019. The compact disk was also brought by him but somehow the same was not exhibited. Thus, application dated 03.04.2019 was filed for getting the said compact disk examined by the CFSL for comparison with File No.140330-001 recorded in the compact disk on record as Ex. R-1/53.

3. The petitioner has submitted that during the course of his evidence, respondent No. 1 has brought on record only statement dated 28.07.2014 recorded before the Patiala police as Ex. P-5/H, however, the compact disk handed over to the police at that time was not brought on record. During the course of his cross-examination, he denied the fact that the said compact disk had been recorded by him instead, he stated that the same had been recorded by Mr. Gurratanpal Singh,

maternal uncle of the petitioner and that he had handed it over to him. He has also stated that the compromise meeting took place on 09.04.2014 and Sh. Gurratanpal Singh has since expired. Said Sh. Gurratanpal Singh has passed away on a date between 30.03.2014 and 09.04.2014 and, thus, the statement of respondent No. 1 is proved to be wrong. The compact disk could not have been recorded by Sh. Gurratanpal Singh. It was in fact recorded by respondent No. 1 and this fact can be proved by a comparison with the recording contained in Ex. R-1/53. The comparison would also establish that respondent No. 1 has deposed falsely on oath. The trial Court has, thus, erred in rejecting her application. Once, liberty was given to the petitioner to produce the compact disk on record during the course of her evidence, the trial Court was in error in not taking the same on record and thereafter rejecting her application on the ground that material, which is not on record cannot be sent for comparison.

4. Learned senior counsel for respondent No.1 submits that the compact disk referred to hereinabove was never exhibited by the police witness appearing as RW-8. Instead of filing an application for re-examination of the witness or for adducing additional evidence, the petitioner filed the application dated 03.04.2019 for getting a compact disk which was not on record compared with Ex. R-1/53. Proper procedure was not followed by her and, thus, there is no error in the order passed by the trial Court. It is further submitted that the application was dismissed on 29.01.2020 and thereafter the case was listed on 26 different dates. Yet, no application was filed for re-examination of RW-8. The impugned order had been challenged in January 2021 only because arguments of the husband-respondent have concluded in the same month and attempt is to delay the conclusion of the proceedings. This is corroborated by the fact that four different revision petitions have been filed after the arguments of respondent No. 1 were concluded but

fortunately all of them have been rejected by this Court. In order dated 07.12.2020 passed in CR No.2600 of 2020, this Court has noticed that the case is time bound. Directions in this regard have already been issued by the High Court. Apart from the fact that the procedure adopted by the petitioner is incorrect, the same recording is already on record as Ex. R-1/53 and the same has been subjected to examination by the CFSL. Thus, no useful purpose will be served by sending another copy of the same recording for forensic examination. Reliance has also been placed on Sections 45-A and 65-B of the Evidence Act, 1872 as well as judgments passed in *Anvar P.V. vs. P.K. Basheer and others, 2015(1) SCC(Civil) 27*, *Jatinder Pal Singh vs. Krishan Kishore Bajaj, 2019(2) RCR(Criminal) 344* as well as *Arjun Panditrao Khotkar vs. Kailash Khushanrao Gorantyal and others, 2020(7) SCC 1* to argue that unless and until a certificate of authenticity of the recording is submitted along with the recording, the same cannot be sent for forensic examination. Finally, it has been argued that the petitioner in the trial is the husband. The compact disk was allegedly submitted along with his statement recorded on 28.07.2014, which is Ex. P-5/H on record. He does not want to get the compact disk exhibited and, thus, in case it is found that the husband has not led the best evidence available with him, an adverse inference be drawn against him.

5. Ms. Munisha Gandhi, Sr. Advocate was appointed as amicus curiae to assist the Court as the petitioner has appeared in person. She has argued the case in a very balanced manner and has submitted a neutral point of view. According to her, the order of the trial Court is not erroneous in law as the procedure prescribed by law has not been followed by the wife-petitioner. Under the circumstances when the compact disk sought to be sent for forensic examination is not on record, the trial Court was justified in passing the impugned order as something which is not on record can never be sent for forensic examination. She has however,

submitted that rules of procedure are hand maids of justice and that the Court may take a balanced view.

6. On one hand is the anxiety of the wife to ensure that all relevant evidence is brought on record and on the other side is the anxiety of the husband to get the trial concluded at an early date as the same has been pending since the year 2015. Undoubtedly a balanced view has to be taken.

7. At the centre of the controversy is the compact disk submitted by the husband to the Patiala police while getting his statement recorded on 28.07.2014. The said compact disk was brought on record during the evidence of husband-respondent but was de-exhibited with liberty to the wife-petitioner to get the same exhibited during the course of her evidence. This was probably because the husband-respondent did not want the said compact disk to be brought on record. For this reason, it has also been argued on his behalf that the trial Court may draw an adverse inference against him in case it is found that he has failed to produce the best evidence available with him. Another compact disk is on record as Ex. R-1/53. This compact disk contains a more elaborate recording of the compromise meeting. The recording contained in the compact disk given by the husband-respondent to the police is one of the files in Ex. R-1/53 namely file No.140330-001 Ex. R-1/53 has already been subjected to forensic examination and the report is on record. Of course, if the compact disk in dispute is sent for forensic examination, it may result in production of evidence in favour of the wife-petitioner and objections to admissibility of Ex. R-1/53 may be negated. However, that is just one possibility. The other possibility is that the said compact disk may still be discarded by the trial Court as during his cross-examination, the husband-respondent had denied recording the same. The outcome of forensic examination cannot be predicted as on date. The wife-petitioner has already produced the same recording as part of her

evidence by way of Ex. R-1/53 and she must rely on the evidence already produced by her for success. It is common knowledge that forensic examination takes a long time and in case the compact disk is sent for the same, the trial will be delayed inordinately. Admittedly the matter is now at the stage of final arguments and it has already been five years since the petition was filed. An early decision would be in the best interest of both the parties. The wife-petitioner has also not followed the proper procedure provided in law. Instead of asking for re-examination of RW-8 or production of additional evidence, a course unknown to the law of procedure has been adopted by her. She wants material, which is not on record to be sent for forensic examination and this is impermissible. Although rules of procedure are hand maids of justice, the same are not totally redundant. The record indicates that the petitioner-wife has the assistance of counsel and, thus, it cannot be said that there was lack of awareness of rules of procedure.

8. For the aforementioned reasons, the revision petition has no merit and is dismissed.

9. The valuable assistance rendered by Ms. Munisha Gandhi, Sr. Advocate is greatly appreciated.

February 10, 2021
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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes

Whether Reportable : Yes