

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

Sr. No.203

CRM-M-53773-2018

Date of decision : 29.11.2022

Darshan Kaur

.....Petitioner(s)

VERSUS

Satnam Singh

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Rahul Sharma-I, Advocate for the petitioner

Mr.Harinder Singh, Advocate for the respondent

AMAN CHAUDHARY, J.

The present petition has been filed under Section 482 of the Code of Criminal procedure for quashing of the order dated 20.10.2018, Annexure P-5, whereby the application preferred by the petitioner for leading secondary evidence has been dismissed.

Learned counsel for the petitioner would contend that the complainant-petitioner had produced CW-4, Assistant Lineman (ASDC), PSPCL, who had brought the summoned record of the electronic connection in dispute along with related documents, statement of whom was recorded on 03.02.2014, Annexure P-2. It is his submission that the necessity to file an application for leading secondary evidence, to prove the aforesaid documents, arose on account of the fact that the summoned officer/clerk of PSPCL, Amloh gave her statement on 16.10.2018, that the above said record was not traceable due to shifting of the office. He would submit that the said application was dismissed by the trial Court vide order dated

20.10.2018, Annexure P-5, on the sole ground that the complainant, without filing an application for additional evidence, cannot be allowed to lead fresh evidence, under the garb of an application filed for leading secondary evidence, just because the Consumer Clerk, PSPCL suffered a statement in the Court on 16.10.2018 that the consumption record is not available in the office, supporting her statement with non-availability certificate, thereof as Mark 'A'. In this regard, it is his submission that the aforesaid order is erroneous, on account of the fact that the documents sought to be produced by way of secondary evidence, were already produced and proved during the stage of preliminary evidence, by Assistant Lineman (ASDC), PSPCL, Sub Division, Amloh. He submits that, but for the fact of non-traceability of the documents in the office of PSPCL, as was stated by the official and substantiated by the non availability certificate Mark 'A', the requirement of filing the said application for leading secondary evidence would not have arisen. Thus, it was not a case of producing fresh documents.

Opposing the petition, the learned counsel for the respondent submits that the documents stated to have been produced during the preliminary evidence stage, were behind the back of the accused-respondent, being prior to the issuance of summoning order, cannot be relied upon against him. He however, submits that in case, the aforesaid documents are allowed to be exhibited, he be granted the liberty to object to the admissibility thereof.

Heard.

It would be at first, apposite to refer to Sections 65 and 66 of the Indian Evidence Act, which read thus :-

“65. Cases in which secondary evidence relating to documents may be given.— Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:-

(a) When the original is shown or appears to be in the possession or power— of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence;

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

- In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

- In case (b), the written admission is admissible.

- In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

-In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. Rules as to notice to produce - Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, [or to his attorney or pleader] such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

(1) when the document to be proved is itself a notice; (2) when, from the nature of the case, the adverse party must know that he will be required to produce it; (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force; (4) when the adverse party or his agent has the original in Court;

(5) when the adverse party or his agent has admitted the loss of the document;

(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.”

The issue as arises in the present case is from the fact that, on having been summoned, the official of PSPCL made a statement on 16.10.2018, before the trial Court that the record in question was not traceable in the office due to shifting, as substantiated by the non-availability certificate, Mark 'A', that led to filing of application for leading secondary evidence by the complainant-petitioner. It is axiomatic from the statement dated 03.02.2014 of CW-4, Assistant Lineman, PSPCL, Annexure P-2, as recorded during the course of preliminary evidence, that original A & A Form, Test Report, Original Certificate of Satnam Singh,

dated 24.12.2012, permanent disconnection order dated 23.12.2013, service connection order and attested copy of passbook, were produced, as Ex.CW4/A to Ex.CW4/F.

Hon'ble The Supreme Court of India, in the case of **Ashok Dulichand Vs. Madahavlal Dube and another**, 1975 AIR 1748, has held that "According to Clause (a) of Section 65 of Indian Evidence Act, Secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in possession or power of the person against whom the document is sought to be proved or of any person out of reach of, or not subject to, the process of the Court of any person legally bound to produce it, and when, after the notice mentioned in Section 66 such person does not produce it. Clauses (b) to (g) of Section 65 specify some other contingencies wherein secondary evidence relating to a document may be given."

In the case of **M. Chandra vs. M.Thangamuthu**, (2010) 9 SCC 712, Hon'ble The Supreme Court of India considering the requirement of Section 65 of the Evidence Act, held that "if secondary evidence is admissible, it may be adduced in any form in which it may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original."

Further, in the matter of **Rakesh Mohindra Vs. Anita Beri and Ors.** (2016) 16 SCC 483, Hon'ble The Supreme Court of India Court has observed that unless it is established that the original document is lost

or destroyed and despite best efforts, the party is unable to produce the same, being beyond their control, secondary evidence in respect of the said document cannot be accepted.

Adverting to the case in hand, it is imperative to notice that the factum of the record in question, having been produced in original and exhibited before the trial Court during the course of preliminary stage, is now not traceable in the office of PSPCL. Therefore, it can be safely inferred that the petitioner is genuinely unable to get produced the original documents through PSPCL, for no fault of his, it being a situation beyond his control. In view of the exceptions to the rule, requiring primary evidence, that are designed to provide relief in such cases, the present petition deserves to be allowed.

Needless to observe that the mere admission of secondary evidence does not *ipso facto* determine, the authenticity or genuineness thereof, which requires to be established during the course of trial in accordance with law.

Considering the facts and circumstances of the case and beingwhelmed by the decisions in the afore referred cases, this Court finds merit in the present petition, as a sequel thereto, the order dated 20.10.2018, Annexure P-5, is set aside and the petitioner is permitted to adduce secondary evidence in respect of documents mentioned in the application, with liberty to the respondent to object to the admissibility thereof.

The present petition is allowed accordingly.

The observations made in this order are only for the adjudication of the present petition, which may not be construed as an expression on merits.

29.11.2022
rimple/gsv

(AMAN CHAUDHARY)
JUDGE

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