

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: *January 12th, 2022*

1.

Criminal Miscellaneous No.M-39633 of 2019

Surjit Singh

..... Petitioner

VERSUS

..... Respondent

State of Punjab & another

. . .

2.

Criminal Miscellaneous No.M-15026 of 2019

Surjit Singh

..... Petitioner

VERSUS

..... Respondent

State of Punjab & others

. . .

CORAM: **HON'BLE MR. JUSTICE SANT PARKASH**

. . .

PRESENT: - Mr. Arvind Kashyap, Advocate, for the petitioner.

Mr. Tanvir Joshi, Assistant Advocate General, Punjab.

Mr. H.S. Mann, Advocate, for the private respondent(s).

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Sant Parkash, J

This judgment shall dispose of aforementioned two petitions as they arise out of same FIR and involve similar facts and questions of law.

Crl. Misc. No.M-39633 of 2019 has been filed for quashing order dated 20.07.2019 passed by the Judicial Magistrate 1st Class, Amloh, District Fatehgarh Sahib in case 'State vs. Gurmeet Singh & others' in FIR

No.75 dated 20.07.2013 under Sections 406, 420, 465, 467, 468, 471 IPC, registered at Police Station, Amlloh, District Fatehgarh Sahib.

Crl. Misc. No.M-15026 of 2019 seeks quashing order dated 27.11.2017 passed by the trial court in case FIR, referred to above.

Succinctly, petitioner Surjit Singh and his brother Sukhchain Singh, had given General Power of Attorney in favour of Gurmeet Singh vide Vasika No.77 dated 21.02.2012 to manage their agricultural land measuring 4 kanals at Amlloh as they were residing at Phagwara, District Kapurthala. However, Gurmeet Singh in connivance with other persons sold their land measuring 12 kanal to various persons after carving out plots. On coming to know of this fact, petitioner got registered aforesaid FIR against Gurmeet Singh. Challan was presented, however, during proceedings of the case, Gurmeet Singh died.

It came to the notice of petitioner at the time of examination of his brother Sukhchain Singh that he had recordings in CD regarding the cheating committed against them, however, an objection was raised as it was not produced before police during investigation. This fact led the petitioner to move an application dated 10.12.2014 under Section 311 Cr.P.C. for producing the CD in evidence. The said application was dismissed by the trial court vide order dated 27.11.2017 (impugned in Crl. Misc. No.M-15026 of 2019) on the ground that application was an afterthought to fill up the lacuna of the case.

In Crl. Misc. No.M-39633 of 2019, another application dated 14.05.2019 moved by the petitioner under Section 311 Cr.P.C. for leading additional evidence i.e. to produce and prove the written statement filed by Gurmeet Singh in Civil Suit No.22 of 2013 pending in the court of

Civil Judge (Jr. Div.), Amloh by examining Mr. Gian Singh Advocate and by summoning Ahlmad of the court to bring the said file and to summon MHC, Police Station, City, Sangrur to produce and prove FIR No.4 dated 02.03.2011 under Sections 420, 506, 120-B IPC, Police Station, City, Sangrur as well as FIR No.296 dated 25.03.2013 under Sections 420, 120-B IPC, Police Station, City, Sangrur, registered against Gurdeep Singh and Gurmeet Singh. The said application was dismissed by the trial court vide impugned order dated 20.07.2019 on the ground that written statement filed by Gurmeet Singh admitting a fact is not a proof of guilt of Gurdeep Singh and FIRs registered against the accused are regarding a different piece of land.

Learned counsel for the petitioner while assailing the impugned orders has vehemently argued that the trial court fell in error while declining the applications moved by the petitioner as the documents/CD sought to be produced by him were relevant and no prejudice was going to be caused to the opposite party as they had the right to cross examine. It is a settled law that additional evidence or any other evidence which is necessary for fair decision of the case, can be allowed at any stage.

Learned counsel for the respondent-State, though has supported the petitioner's prayer before the trial court but learned counsel for the private respondent(s) has hailed the orders passed by the trial court by contending that there was an alleged conversation between Sukhchain Singh and Gurdeep Singh which was recorded in CD which was not taken into possession by police during investigation. Order dated 27.11.2017 though was challenged by the petitioner before Sessions Judge, Fatehgarh Sahib but same was withdrawn vide order dated 15.03.2019. The alleged CD

was not a relevant material. The possibility of fabrication of CD cannot be ruled out. Learned counsel have further contended that an electronic record is not admissible unless it is accompanied by a certificate as contemplated under Section 65-B (4) of Indian Evidence Act, 1872. It is a piece of secondary evidence and cannot be permitted to be led. There was no connivance between Gurdeep Singh and Gurmeet Singh in regard to commission of any offence. The applications had been moved by the petitioner merely to delay the proceedings of the case.

I have heard learned counsel for the parties and perused the record.

Admittedly, the CD sought to be produced on record was not given during the course of investigation at any stage. It was only during the examination of Sukhchain Singh that the CD was tendered in evidence but the same was objected to. It is a settled law that any reproduction of a computer record, 'primary' or 'secondary' cannot be led in evidence in the form of Pen Drive or CD unless the authenticity of the device through which it is lawfully recorded and the authenticity qua the feeding of date in normal course of a regular activity of computer operation is claimed and established before the court by producing the certificate as prescribed under Section 65-B (4) of Indian Evidence Act. In the case in hand, petitioner had not even disclosed in his application as to when the information as contained in the CD was recorded. It was also not disclosed as to what was the device through which the information as contained in the CD was recorded. In this regard, the Supreme Court in the case of Tukaram S. Dighole vs. Manikrao Shivaji Kikate, 2019(1) RCR (Civil) 959, has held that the authenticity of the recording of information is as important as the content of the information

itself, lest the court should be taken for a ride by unscrupulous experts in the field of the fabrication of the information. As such, digital information has to be treated with due suspicion and more stringent test has to be applied to it than the ordinary evidence. Thus, the trial court has rightly held that filing of application to produce the CD was an afterthought to fill up the lacuna of the case.

Admittedly, accused Gurmeet Singh has died during the pendency of present case and proceedings qua him have already been abated. Therefore, written statement filed by him admitting any fact in another civil suit cannot be held as a proof of the guilt of accused Gurdeep Singh facing trial in the present case. Moreover, the status of Gurmeet Singh to be an attendant/employee of Gurdeep Singh does not *ipso facto* prove any connivance between them regarding the commission of any offence.

So far as FIR No.4 dated 02.03.2011 and FIR No.296 dated 25.03.2013, referred to above, are concerned, they had been registered against the accused regarding a different piece of land from the land which is involved in the present case. Thus, these FIRs are not related to the facts of the present case and it is not on record that accused has ever been convicted in any of the FIRs, as such, no inference can be drawn regarding the guilt of the accused in some other criminal case registered against him. Moreover, the trial court was right in holding that the documents sought to be produced by the petitioner, were not relevant to this case and the application was rightly rejected. Moreover, it appears that moving of applications by the petitioner is just an attempt to delay the proceedings.

In view of aforesaid discussion, no fault can be found in the impugned orders passed by the trial court. Finding no merit in both the petitions, same are hereby dismissed.

(Sant Parkash)
Judge

January 12th, 2022
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<u>Whether Speaking/ Reasoned:</u>	<u>Yes/ No</u>
<u>Whether Reportable:</u>	<u>Yes/ No</u>