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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-690-2022 (O&M)

Date of Decision:27.03.2023

AMARJIT SINGH @ BALI

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. J.P.S. Brar, Advocate
for the petitioner.

Ms. Navreet Kaur Barnala, Asstt. A.G., Punjab.

Mr. B.S. Jatana, Advocate
for the complainant.

JASJIT SINGH BEDI, J (Oral)

The challenge in the present revision petition is to the order dated 17.03.2022 vide which an application under Section 65 of the Indian Evidence Act filed by the petitioner/accused Amarjit Singh @ Bali for proving the inquiry report (Ex.DA) by way of leading secondary evidence has been dismissed.

2. The brief facts of the case are that an FIR No.84 dated 01.07.2019 under Sections 302/34 IPC Police Station Bhikhi Mansa came to be registered at the instance of Lakhwinder Singh against the petitioner and his co-accused namely, Lovepreet Singh @ Kinnu, Bhupinder Singh @ Happy and Kuljit Singh @ Gandhi with the allegations that all of them had caused injuries to the deceased-Sukchain Singh at about 05.30 PM on

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30.06.2019 consequent to which, he had died. During the course of investigation, it is the case of the petitioner that he had been found innocent on account of him being at Gurdwara Baru Sahib, Himachal Pradesh on the date and time of the occurrence. However, nevertheless, a report under Section 173(2) Cr.P.C. came to be submitted against the petitioner along with Lovepreet Singh, Bhupinder Singh and Kuljit Singh.

3. During the course of Trial SI/SHO Amandeep Singh who is stated to have prepared an inquiry report exonerating the petitioner was examined as DW-7. He denied the factum of him submitting a report exonerating the petitioner. He was declared hostile. Subsequently, the instant application was moved to lead secondary evidence i.e. to produce on record the photocopy of the said inquiry report in the possession of the petitioner.

4. The aforementioned application to lead secondary evidence was declined by the Trial Court holding that the existence of the primary evidence had not been established in accordance with law.

5. It is this order which is under challenge in the present case.

6. The learned counsel for the petitioner contends that the Trial Court has not considered the matter in its proper perspective. In fact, an application had been moved by the father of the petitioner namely Lakhvir Singh to the Senior Superintendent of Police, Mansa for an inquiry into the matter. As per the said application, the petitioner was stated to be in Baru Sahib, Himachal Pradesh on the date and time of the occurrence. The said application had been marked to SI/SHO Amandeep Singh who further marked it to SI Shivji Ram. Ultimately ASI Ramphal had gone to Baru Sahib,

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Himachal Pradesh and on the basis of his inquiry, it had come to light that the petitioner was in Himachal Pradesh at the time of the occurrence. He contends that there were DDR entries showing that ASI Ramphal had gone to Himachal for the purposes of holding an inquiry on the application moved. CCTV footage had also been obtained categorically establishing the presence of the petitioner along with other persons at Baru Sahib. In addition, call detail records were examined to establish his alibi. It was the consistent version of the petitioner which was evident from the line of cross-examination of the witnesses that the petitioner was not in Punjab on the date and time of the occurrence but 300 Kms away and the question of him committing the offence did not arise. Despite all the corroborative evidence available, the Trial Court had dismissed the application to lead secondary evidence with respect to the inquiry report holding that the existence and destruction/unavailability of the primary evidence i.e. the original inquiry report had not been established in accordance with law and therefore, the photocopy could not be read in secondary evidence.

7. On the other hand, the learned State counsel contends that the judgment of the Trial Court is well-reasoned and is not required to be interfered with. The petitioner had been unable to establish the existence and destruction/loss of the enquiry report and therefore secondary evidence regarding the same could not be lead.

8. The learned counsel for the complainant has also supported the counsel for the State and held that the judgment of the Trial Court is well-reasoned and is not required to be interfered with. The petitioner had not

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been able to establish the existence of the primary evidence and therefore, there was no question of the photocopy of the document (Ex.DA) being produced by way of secondary evidence.

9. I have heard the learned counsel for the parties and have examined the record.

10. Before proceeding further in the matter, it would be apposite to refer to the provisions of the Indian Evidence Act, 1872.

Section 63 of the Indian Evidence Act, reads as under:-

“63. Secondary evidence.—Secondary evidence means and includes—

(1) Certified copies given under the provisions hereinafter contained;

(2) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) Copies made from or compared with the original;

(4) Counterparts of documents as against the parties who did not execute them;

(5) Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but

the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.”

Section 65 of the Indian Evidence Act, reads as under:-

“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;

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(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.”

Section 114(e) of the Indian Evidence Act, reads as under:-

“114. Court may presume existence of certain facts. —The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations The Court may presume—

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(e) That judicial and official acts have been regularly performed;”

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11. The Hon'ble Supreme Court in the case of **Jagmail Singh & Another Versus Karamjit Singh & Others, 2020(2) R.C.R. (Civil) 510**, held as under:-

11. A perusal of Section 65 makes it clear that secondary evidence may be given with regard to existence, condition or the contents of a document when the original is shown or appears to be in possession or power against whom the document is sought to be produced, 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 notice mentioned in Section 66 such person does not produce it. It is a settled position of law that for secondary evidence to be admitted foundational evidence has to be given being the reasons as to why the original Evidence has not been furnished.

12. The issue arising out of somewhat similar facts and circumstances has been considered by this Court in Ashok Dulichand v. Madahavlal Dube and Anr., [1976] 1 SCR 246, and it was held as under :-

"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."

13. In the matter of Rakesh Mohindra v. Anita Beri and Ors., (2016) 16 SCC 483 this Court has observed as under:-

"15. The preconditions for leading secondary evidence are that such original documents could not be produced by the party relying upon such documents in spite of best efforts, unable to produce the same which is beyond their control. The party sought to produce secondary evidence must establish for the non-production of primary evidence. Unless, it is established that the original

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documents is lost or destroyed or is being deliberately withheld by the party in respect of that document sought to be used, secondary evidence in respect of that document cannot accepted."

14. It is trite that under the Evidence Act, 1872 facts have to be established by primary evidence and secondary evidence is only an exception to the rule for which foundational facts have to be established to account for the existence of the primary evidence. In the case of H. Siddiqui (dead) by IRs v. A. Ramalingam, [2011 (4) SCC 240], this Court reiterated that where original documents are not produced without a plausible reason and factual foundation for laying secondary evidence not established it is not permissible for the court to allow a party to adduce secondary evidence.

15. In the case at hand, it is imperative to appreciate the evidence of the witnesses as it is only after scrutinizing the same opinion can be found as to the existence, loss or destruction of the original Will. While both the revenue officials failed to produce the original Will, upon perusal of the cross-examination it is clear that neither of the officials has unequivocally denied the existence of the Will. PW- 3 Rakesh Kumar stated during his cross-examination that there was another patwari in that area and he was unaware if such Will was presented before the other patwari. He went on to state that this matter was 25 years old and he was no longer posted in that area and, therefore, could not trace the Will. Moreover, PW- 4 went on to admit that, "there was registered Will which was entered. There was a Katchi (unregistered) Will of Babu Singh was handed over to Rakesh Kumar Patwari for entering the mutation...". Furthermore, the prima facie evidence of existence of the Will is established from the examination of PW- 1, Darshan Singh, who is the scribe of the Will in question and deposed as under :-

"I have seen the Will dated 24.01.1989 which bears my signature as scribe and as well as witness."

16. In view of the aforesaid factual situation prevailing in the case at hand, it is clear that the factual foundation to establish the right to give secondary evidence was laid down by the appellants and thus the High Court ought to have given them an opportunity to lead secondary evidence. The High Court

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committed grave error of law without properly evaluating the evidence and holding that the pre-requisite condition i.e., existence of Will remained unestablished on record and thereby denied an opportunity to the appellants to produce secondary evidence.”

(emphasis supplied)

12. This Court in the case in the of **Prem Lata Versus Dwarka Parsad & others, 2014(2) R.C.R. (Civil) 458**, held as under:-

“7. I have given my thoughtful consideration to the matter. A party can be permitted to lead secondary evidence of a document on proving existence, execution and loss of the original document. Permission to lead secondary evidence in the instant case can also be granted subject to proof of the aforesaid facts.

8. There is no absolute rule that photostat copy of a document is not admissible as secondary evidence. In the cases of Ashok Dulichand (supra) and Mukesh Kumar alias Motta (supra), it has not been laid down that in no circumstances, photostat copy of a document can be admitted as secondary evidence thereof. On the contrary, it is for the party seeking to produce the photostat copy as secondary evidence to depict that it is correct copy of the original document. Subject to proof of the same, photostat copy of a document is admissible as secondary evidence of the document in view of Section 63 (2) of the Evidence Act, having been prepared by mechanical process.”

(emphasis supplied)

13. A perusal of Sections 63 and 65 of the Evidence Act, 1872 along with the judgments (supra) would show that for leading secondary evidence with respect to a document, the existence execution and loss of the primary evidence i.e. the original inquiry report in this case must be established. It

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must also be further established that the said primary evidence cannot be brought on record for various reasons as set out in Section 65 of the Indian Evidence Act. It is only when the existence of the primary evidence and its loss or destruction is established, can an application for leading secondary evidence with respect to the same document be permitted.

14. In the instant case, there are a number of factors which would establish that an inquiry did take place which culminated in exonerating the petitioner but the original report was unavailable. Firstly, it is established beyond doubt from the statement of Inspector Amandeep Singh, DW7 that an application dated 06.08.2019 bearing No.107/5C (Ex.DW7/A) moved by Lakhvir Singh father of the petitioner had been sent to him by the office of the Senior Superintendent of Police, Mansa for necessary action. He marked the inquiry to SI Shivji Ram though the enquiry was conducted by ASI Ramphal. Secondly, it is apparent from the deposition of DW8-HC Sukhjot Singh that DDR No.11 (DW8/A) dated 20.08.2019 was entered regarding the departure of ASI Ramphal (DW6) to Baru Sahib, Himachal Pradesh in connection with investigation in FIR No.84 of 2019. Similarly, vide DDR No.41 dated 21.08.2019 (Ex.DW8/B) ASI Ramphal had returned to the Police Station from Baru Sahib after making an investigation in the said FIR. Thirdly, the statement of DW9-Kirti Kumar, CCTV Operator posted at Baru Sahib was recorded. He stated that a DVD (DW9/A) of the CCTV footage contained in a DVR had been handed over by him to the Police at Baru Sahib. The Incharge of the CCTV Department at Baru Sahib was one Randeep Singh. In cross-examination, he has admitted that one police official

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had come to Baru Sahib. Fourthly, the deposition of ASI Ramphal-DW6 would clearly establish that he had gone to Baru Sahib and had conducted an inquiry on an application moved by Lakhvir Singh son of Arjun Singh, father of the petitioner to the Senior Superintendent of Police, Mansa. He has categorically stated that the inquiry had been entrusted to SHO, SI Amandeep Singh. He has also referred to the various facets of the inquiry. In his deposition, he has stated that the petitioner along with others had gone to Baru Sahib in an Innova car bearing No.PB-13AR-5204 and an entry in that regard had been recorded at the gate of the Gurdwara. He had also checked the CCTV footage of the Gurdwara. The CCTV Incharge was Randeep Singh son of Thakur Onkar Singh (referred to also in the deposition of DW9-Kirti Kumar). He had got prepared photographs and a CD showing the presence of the petitioner at Baru Sahib on the date and at the time of the occurrence. All the material along with the statements of the gate keeper, CCTV Operator etc. had been handed over by him to SI/SHO Amandeep Singh. He admitted the existence of the report dated 01.09.2019, the photocopy of which is Ex.D6/C (it was this document which is sought to be proved on record by way of secondary evidence). Fifthly, though SI/SHO Amandeep Singh has denied the existence of the report exonerating the petitioner on the basis of the evidence collected by ASI Ramphal, however, there are certain facts which have been admitted by him. He admits that he had marked an inquiry on the application moved by the father of the petitioner. He also admits that he had sent a request for getting the call details referred to in the enquiry report to establish alibi. Thus, in terms of Section 114(e) of the Evidence Act, it can be

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presumed that an enquiry did take place on it being marked by SI/SHO Amandeep Singh to ASI Shivji Ram, though it came to be conducted by ASI Ramphal. Sixthly, the evidence of the various defence witnesses produced would corroborate the conclusions arrived at in the inquiry report. The statement of DW3-Narinder Kumar Bohra was recorded to the effect that vehicle No.PH13-AR-5204 had crossed the HEL Toll Plaza, Chandi Mandir on 29.06.2019 at about 07.35 PM. The statement of ASI Ramphal as DW6 would show that there was an entry made at the gate of the Gurdwara at Baru Sahib showing that the Innova in question had entered the Gurdwara. Apart from this, the mobile phone tower locations admittedly obtained by ASI Amandeep Singh-DW7 would show that the petitioner was actually at Baru Sahib at the time of the occurrence. Therefore, once the defence evidence separately led also corroborates the conclusion arrived at in an inquiry, the veracity of the original inquiry report being in existence but not available cannot be doubted.

15. As against the aforementioned material in support of the existence of the inquiry report, there is the lack of cross-examination of SI/SHO Amandeep Singh on the existence of the inquiry report when he was examined as PW13. This could be an oversight by the defence counsel as the consistent case of the petitioner/defence which emanates from the cross-examination of the prosecution witnesses and the deposition of defence witnesses is the plea of alibi of the petitioner being at Baru Sahib, Himachal Pradesh and not at the place of occurrence.

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16. It is pertinent to mention here that a conviction in a murder case entails capital punishment. Therefore, the defence of an accused ought not to be curtailed, moreso, when there is hardly any doubt of the existence and current availability of the original inquiry report as has been discussed hereinabove.

17. In view of the above, the order dated 17.03.2022 passed by the Additional Sessions Judge, Mansa is set aside and the application dated 09.03.2022 (Annexure P-1) moved by the petitioner is allowed and he is granted permission to prove by way of secondary evidence, the photocopy of the report of SHO/SI Amandeep Singh.

18. However, it is made clear that the observations in this order are only for the purpose of deciding this case and the evidentiary value of the enquiry report shall be a subject matter of appreciation by the Trial Court during the course of the Trial.

(JASJIT SINGH BEDI)
JUDGE

27.03.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No