

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

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CRM-M-33225-2023

Date of decision : 24.07.2023

Kamalpreet Singh and another**..... Petitioners****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. H.S. Dhandi, Advocate
for the petitioners.

PANKAJ JAIN, J. (Oral)

Petitioner is aggrieved of the order dated 18.05.2023 (Annexure P-3), whereby application moved by the prosecution under Section 311 Cr.P.C. has been allowed granting them permission to produce electronic evidence in the shape of pen drive in the trial arising out of FIR No.23 dated 09.03.2021, registered for the offences punishable under Sections 452, 427 and 506 of IPC (Sections 428, 457 and 34 of IPC added later on), at Police Station Rahon, District SBS Nagar.

2. The trial Court found that CCTV footage was necessary for adjudication of the trial and thus allowed the application observing as under:-

“4. Perusal of the file reveals that by way of this application the prosecution wants to produce the pen drive which was prepared from the DVR of the CCTV cameras installed in the house of the complainant on the ground that the DVR was handed over to the investigation agency but the same was not attached at the time of filing of the charge sheet, as such it is necessary to prove the occurrence by producing the above-said pen drive. Whereas the accused filed the reply and submitted that the alleged pen driver cannot be

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looked into any purpose as alleged in the application on the ground that for relying upon any part of CCTV Footage the original DVR is to be produced.

5. Since the pen drive has been prepared from the original DVR and the complainant should not suffer due to inadvertence by the investigating agency for not placing on record the DVR at the time of presentation of challan and furthermore the said pen drive has to be proved by the prosecution as per Evidence Act and moreover the same is for the proper adjudication of the trial, as such the present application in hand is allowed and the said pen drive is to be taken on record but however, it is made clear that one copy of pen drive is to be supplied to the accused. Now to come up on 24.05.2023. Let, the prosecution witnesses be summoned for the date fixed.”

3. Counsel for the petitioners has attacked the order relying upon law laid down by Apex Court in the case of '**Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and others**', reported as **2020(7) SCC 1** to submit that in the absence of valid certificate under Section 65B of the Evidence Act, the trial Court ought not have allowed the application filed under Section 311 Cr.P.C. till a valid certificate was produced by the complainant.

4. I have heard counsel for the petitioners and have gone through the records of the case.

5. The argument raised is misconceived and the reliance placed upon law laid down by Apex Court in **Arjun Panditrao Khotkar's case (supra)** is result of misreading of the judgment.

6. Section 311 Cr.P.C. reads as under:-

“Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

7. A bare perusal of the provision would reveal that the same only clothes the Court with the power to allow relevant piece of evidence at any stage of trial. The same does not deal with admissibility/formal proof of the evidence. Admissibility, relevance and mode of proof are three distinct aspects qua a piece of evidence. A relevant piece of evidence may not be admissible. A relevant and admitted piece of evidence may get ignored for want of formal proof thereof. Trial Court vide impugned order has only commented upon relevance of evidence and allowed it to be tendered involving Section 311 of Cr.P.C. Trial Court rightly held in para 5 of the impugned order that merely allowing the evidence does not mean that the evidence stands proved. The same has to be proved by the prosecution as per the Evidence Act.

8. In view of above, in the considered opinion of this Court, the present petition is misconceived. Definitely, the trial Court will consider at an appropriate stage as to whether:-

- (i) the evidence has been proved in accordance with law and/or;
- (ii) whether the same ought to have been admitted or not in the absence of certificate as required by law.

9. Consequently, the present petition is dismissed as pre-mature.

(PANKAJ JAIN)
JUDGE

24.07.2023

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Whether speaking/reasoned : Yes

Whether Reportable : No