

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

**CRM-M-51957-2023 (O&M)
Date of Decision: 16.10.2023**

Avtar Singh and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Deepak Basatia, Advocate, for the petitioners.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for setting aside the order dated 03.10.2023 (Annexure P-3) passed by learned JMIC, Yamuna Nagar whereby the application for inspection by the complainant in the supervision of technology expert by way of playing of record of the file on laptop in the presence of accused or their counsels filed by the complainant/respondent No.2 has been allowed.

2. The brief factual background of the present case is that the complainant/respondent No.2 had deposed before the learned trial Court as CW-1 and subject matter of his complaint was that the present petitioners who are the accused persons were employees of his company and before they left the company and made up their own company, they had stolen some data from the computer/laptop/electronic gadgets and they have been misusing the aforesaid data. After the examination of the complainant was completed before the trial Court, the police recovered some data/CDs etc. from the petitioners

which were sent to the Forensic Laboratory and the Forensic Laboratory Report came in the year 2019. The complainant's deposition before the trial Court was completed in the year 2021. Since the Forensic Laboratory Report had come, the complainant/respondent No.2 filed an application before the learned trial Court after his deposition under Section 311 Cr.P.C. for recalling the complainant for further examination and along with that another application was filed by him for playing of CD/data in the Court for the purpose of comparison in the presence of accused persons. However, both the applications were taken up together by the learned trial Court being inter-linked and were dismissed by way of a common order dated 08.09.2021 vide Annexure P-5. Thereafter, respondent No.2 preferred a petition before this Court under Section 482 of the Code of Criminal Procedure impugning the aforesaid order and a Co-ordinate Bench of this Court vide order dated 14.12.2021 (Annexure P-6) dismissed the petition while considering the aforesaid both applications and by passing a common order. However, respondent No.2 thereafter preferred an appeal before the Hon'ble Supreme Court which was allowed by the Hon'ble Supreme Court vide order dated 29.08.2023 (Annexure P-7). The Hon'ble Supreme Court set aside the impugned orders. Thereafter, respondent No.2 filed another application before the learned trial Court by making a prayer vide Annexure P-1 for inspection by the complainant in the supervision of technology expert for the aforesaid documents by way of playing the same on the laptop in presence of accused or their counsel. The said application which was filed by respondent No.2 was allowed by the learned trial Judge vide impugned order dated 03.10.2023 vide Annexure P-3. In the operative part of the aforesaid order vide Annexure P-3, it has been so directed that the

application stands allowed and the complainant is allowed to inspect the hard disk Ex.PW208/A in the presence of the accused and/or his counsel by following the guidelines of the judgment in ***P. Gopalkrishnan @ Dileep Vs. State of Kerala and another, 2020 AIR (Supreme Court) 1*** and the case was fixed for inspection of the documents. The present is a petition filed by the petitioners /accused persons for challenging the aforesaid order dated 03.10.2023 (Annexure P-3).

3. Learned counsel for the petitioners submitted that a fresh application which has been filed by respondent No.2 before learned trial Court after the judgment passed by the Hon'ble Supreme Court was not maintainable in view of the fact that once the matter has been decided by the Hon'ble Supreme Court, then such an application could not have been filed because it would amount to filing of a second application on the same cause of action. He further submitted that the Hon'ble Supreme Court was dealing with the application filed under Section 311 Cr.P.C. and now at the most the witness could be recalled but no such inspection or playing of the CD etc. could have been allowed by the learned trial Court.

4. On the other hand, Mr. P.S. Ahluwalia, Advocate and Mr. H.S. Randhawa, Advocate have submitted that it is a case where the learned trial Court has correctly allowed the application in the spirit of the judgment passed by the Hon'ble Supreme Court and rather in case respondent No.2 is not permitted by way of the aforesaid order, then it will amount to violation of the orders passed by the Hon'ble Supreme Court in its spirit. They submitted that earlier when the matter was before the learned trial Court with regard to the two applications filed by respondent No.2 out of which one was under Section

311 Cr.P.C. for the purpose of recalling of the complainant and second for the purpose of inspection and playing of CD etc., learned trial Court itself had observed that both the applications are inter-connected to each other and they were disposed of together by way of a common order and even before this Court also when the matter was taken up by a Co-ordinate Bench, it was so noted that both the applications are inter-connected and again the petition was dismissed by way of a common order. Thereafter, the aforesaid common order itself was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide Annexure P-7 allowed the appeal and it was categorically observed by the Hon'ble Supreme Court that the orders of the Courts below are set aside. They submitted that in other words the earlier orders passed by the learned trial Court as well as the Co-ordinate Bench of this Court have been set aside by the Hon'ble Supreme Court and therefore, it cannot be said that the fresh application cannot be filed by way of second application. They also submitted that even a perusal of the impugned order passed by the learned trial Court would show that the prayer which was made in the application was not only for inspection of the CD but also for playing the CD in the presence of the expert and the accused persons whereas as per the impugned order, it has been specifically so ordered that the application stands allowed and the complainant is allowed to inspect the hard disk in the presence of accused and/or his counsel by following the guidelines of the judgment in ***"P. Gopalkrishnan @ Dileep Vs. State of Kerala and another (Supra)"*** and the case was fixed for inspection of documents but so far as the prayer of respondent No.2 for getting it played in the presence of an expert does not seem to have been allowed by the learned trial Court and therefore, the petitioners have no cause of action to

file the present petition itself since no prejudice is caused to the petitioners in this regard.

5. I have heard the learned counsels for the parties.

6. It is a case where the petitioners are now agitating that respondent No.2 could not have filed the second application before the learned trial Court. However a perusal of the orders passed by the learned trial Court in the initial application Annexure P-1, order passed by a Co-ordinate Bench of this Court as well as the order passed by the Hon'ble Supreme Court, it becomes clear that earlier the learned trial Court as well as this Court had passed a collective order whereby earlier applications of respondent No.2 were disposed of together and even the Hon'ble Supreme Court was also dealing with the common orders which were passed by the learned trial Court and also a Co-ordinate Bench of this Court. The Hon'ble Supreme Court allowed the appeal and had set aside the orders of both the Courts below. Therefore it cannot be said that a fresh application could not have been filed in this regard.

7. Apart from the above, the controversy in the present case was that the complainant wanted to recall the witness for the purpose of getting the hard disks which were allegedly recovered from the petitioners/accused persons and that of the complainant data so as to prove whether the data was stolen by the petitioners or not. In case the complainant is now recalled for the purpose of further examination in pursuance of the orders of Hon'ble Supreme Court and respondent No.2 is not permitted to get the data compared, then it will not be a fruitful exercise. The learned trial Court while dealing with this issue has specifically emphasized on this aspect by stating that the second prayer for comparing the data etc. is intrinsic to the main prayer of recalling of the

witness under Section 311 Cr.P.C. This Court is of the view that there is no legal infirmity in the impugned order passed by the learned trial Court because the proving and comparing of the data itself is a consequential aspect of the main relief with regard to recalling of the witness under Section 311 Cr.P.C. which has already been allowed by the Hon'ble Supreme Court. Therefore it cannot be said that the second application on the basis of which the impugned order was passed was not maintainable and rather it will defeat the spirit of the judgment passed by the Hon'ble Supreme Court vide Annexure P-7.

8. In addition to the above, the operative part of the orders passed by the Judicial Magistrate First Class in the impugned order would show that the complainant has been allowed to inspect the hard disk in presence of the accused or his counsel by following the guidelines in ***P. Gopalkrishnan @ Dileep Vs. State of Kerala and another (Supra)***.

9. In view of the above, this Court does not find any illegality or infirmity in the impugned order dated 03.10.2023 (Annexure P-3) passed by the learned trial Court.

10. Consequently, the present petition is hereby dismissed.

16.10.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned	Yes/No
2. Whether reportable:	Yes/No