

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

132

CR-7069 of 2023

Date of Decision: 01.12.2023

Mohammad Sharif

....Petitioner

Versus

Shabiran and others

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sunny K. Singla, Advocate
for the petitioner.

SANJAY VASHISTH, J.(Oral)

1. By way of present revision petition, order dated 12.09.2023 (Annexure P-6) passed by learned Additional Civil Judge, Sr. Division, Malerkotla has been assailed, whereby application filed by the applicant/petitioner under Section 65 of the Indian Evidence Act for leading secondary evidence to prove application bearing No.112/dasti/DSM 06.09.2017 to the Police authorities, was declined.

2. While declining the request, learned trial Court has specifically observed that in the application preferred under Order 39 Rule 2A CPC, the applicant/petitioner, no where mentioned about the details of the application moved before the Police and no number, date or year was mentioned in the said application. The applicant/petitioner only stated that he moved an application before the Police and

without furnishing the required, particulars straightway sought the permission to lead secondary evidence.

For the sake of convenience, paragraph No.5 of the order dated 12.09.2023 (Annexure P-6) is reproduced herebelow:

'5. After hearing both the parties, I am of the view that the present application is not maintainable as the applicant has miserably failed to prove regarding the loss of the document in question. Merely oral submission made by police official that the application is not traceable, is not sufficient. The applicant or said police official did not disclose that the said document has been lost rather they simply alleged that the same is not traced out. I am of the considered view that as General Rule, secondary evidence is admissible only in the absence of primary evidence as it is the requirement of law that better evidence is to be given first which is the original document itself and secondary evidence may be given only in the absence of better evidence. For making out a case for secondary evidence of the document, the applicant is required to prove the loss of primary document and not its existence and execution. Existence and execution is to be proved by leading evidence after its secondary evidence is permitted. Furthermore, the applicant in his application under Order 39 Rule 2A nowhere mentioned about the said application, he simply stated that he moved a application before the police but no number, date or year has been disclosed by him as and when he moved the alleged application. As such, application in hand is dismissed.'

3. This Court does not find any illegality, perversity in the impugned order dated 12.09.2023(Annexure P-6), therefore, the present revision petition is hereby dismissed.

December 01, 2023
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[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no