



110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7982-2018 (O&M)
Date of decision : 25.09.2024

HARMESH SINGH @ RAMESH SINGHPetitioner

Versus

MAKHAN SINGH AND ORS ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Jagan Nath Bhandari, Advocate
for the petitioner.

Mr. Vivek Suri, Advocate,
Mr. Dushyant Godara, Advocate and
Mr. Darpan Bansal, Advocate for the respondents.

PANKAJ JAIN, J. (ORAL)

Challenge is to the order dated 13th of November, 2018 passed by Civil Judge, Junior Division, Kharar whereby application filed by the plaintiff to tender electronic evidence w.r.t. conversation between the plaintiff and defendant No.1 stands rejected.

2. For convenience, the parties hereinafter referred to by their original position in the suit i.e. the petitioner as the plaintiff and the respondents as the defendants.

3. Plaintiff filed suit for declaration to the effect that he is owner in possession of the suit land to the extent of 1/20th share as described in the headnote of the plaint. Further sought declaration to the effect that sale deed



dated 30.06.2015 executed by Harmesh Singh in favour of defendant No.1 Makhan Singh is illegal, null and void and is result of fraud.

4. While the evidence of the plaintiff was going on the plaintiff moved an application seeking permission to tender electronic evidence under the certificate as prescribed under Section 65-B of the Evidence Act along with CD/DVDs. In the application itself the plaintiff further pleaded that he was ready to tender the original mobile-phone to the satisfaction of the Court.

5. The application was opposed. It was pleaded that the plaintiff has failed to satisfy the conditions for production of alleged evidence as the certificate could not be produced along with the application.

6. Trial Court vide impugned order dismissed the application holding that from perusal of the plaint the case is required to be proved by way of documentary evidence. In terms of Section 59 of the Evidence Act, oral evidence cannot be allowed to prevail over the documentary evidence and thus oral conversation as recorded in the mobile-phone cannot be of any use. It was further claimed that since the plaintiff has already closed his oral evidence and the defendant would not get any opportunity to cross-examine, the application is devoid of merits.

7. Counsel for the petitioner/plaintiff submits that the Trial Court has totally misread the provision as contained under Section 65-B of the Evidence Act. The plaintiff once offered even to tender the original mobile-



phone, evidence sought to be tendered would not fall within the definition of ‘secondary evidence’ in form of the offer made by the plaintiff and thus there was no requirement of compliance with Section 65-B of the Evidence Act in case the original mobile-phone is ordered to be tendered. He, thus, submits that the plaintiff ought to have been granted opportunity to lead evidence.

8. Per contra, Mr. Suri opposes the revision petition submitting that the plaintiff has already closed his oral evidence and as per the prayer clause of the application, he only prayed for tendering the secondary evidence i.e. CD/DVDs and no certificate was produced along with the application. Thus, Trial Court rightly rejected the application.

9. I have heard counsel for the parties and have gone through records of the case.

10. In the present case, it is not disputed that the evidence of the plaintiff was in progress at the time the application was moved and had not been closed by that point of time. In Para 4 of the application, he specifically pleaded as under:

“4. That plaintiff/applicant is ready to tender the original mobile phone for the satisfaction of this court or to check its authenticity further the plaintiff/applicant is also ready to make compliance of Section 65-B of Evidence Act 1872.”

11. Thus, an offer was made to tender the original mobile-phone. Trial Court misread the entire situation.



12. The issue w.r.t. parameters to be considered while dealing with the application seeking permission to lead electronic evidence, has been dealt by the Supreme Court in the case of **Anvar P.V. vs. P.K. Basheer (2014) 10 SCC 473** holding as under :

14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub- Section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65B(2). Following are the specified conditions under Section 65B(2) of the Evidence Act:

- (i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;
- (ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;



(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

- (a) There must be a certificate which identifies the electronic record containing the statement;
- (b) The certificate must describe the manner in which the electronic record was produced;
- (c) The certificate must furnish the particulars of the device involved in the production of that record;
- (d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

13. The same was further clarified and summarized by the Supreme Court in the case of **Vikram Singh vs. State of Punjab, (2017) 8 SCC 518** to hold as under :

25. Learned counsel contended that the tape-recorded conversation has been relied on without there being any certificate under Section 65B of the Evidence Act, 1872. It was contended that audio tapes are recorded on magnetic media, the same could be established through a certificate under Section 65B and in the absence of the certificate, the document which constitutes



electronic record, cannot be deemed to be a valid evidence and has to be ignored from consideration. Reliance has been placed by the learned counsel on the judgment of this Court in *Anvar P.V. v. P.K. Basheer and others*, 2014(4) RCR (Civil) 504 : 2014(5) Recent Apex Judgments (R.A.J.) 459: (2014) 10 SCC 473. The conversation on the land line phone of the complainant situate in a shop was recorded by the complainant. The same cassette containing conversation by which ransom call was made on the landline phone was handed over by the complainant in original to the Police. This Court in its judgment dated 25.01.2010 has referred to the aforesaid fact and has noted the said fact to the following effect:

"The cassette on which the conversations had been recorded on the land line was handed over by Ravi Verma to S.I. Jiwan Kumar and on a replay of the tape, the conversation was clearly audible and was heard by the Police."

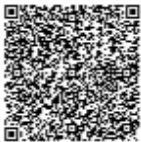
26. The tape recorded conversation was not secondary evidence which required certificate under Section 65B, since it was the original cassette by which ransom call was tape-recorded, there cannot be any dispute that for admission of secondary evidence of electronic record a certificate as contemplated by Section 65B is a mandatory condition. In Anvar P.V. (supra) this Court had laid down the above proposition in paragraph 22. However, in the same judgment this Court has observed that the situation would have been different, had the primary evidence was produced. The conversation recorded by the complainant contains ransom calls was relevant under Section 7 and was primary evidence which was relied on by the complainant. In paragraph 24 of the judgment of this Court in Anvar P.V. it is categorically held that if an electronic record is used as primary evidence the same is admissible in evidence, without compliance with the conditions in Section 65B. Paragraph 24 is as extracted below:



"24. The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65B of the Evidence Act are not satisfied. It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence of electronic record with reference to Sections 59, 65A and 65B of the Evidence Act, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance with the conditions in Section 65B of the Evidence Act."

(emphasis supplied)

14. In view of the aforesaid parameters, once the plaintiff offered to tender original mobile-phone which is a primary evidence, there was no requirement for certification under Section 65-B of the Evidence Act as the same is contemplated in a situation wherein electronic evidence is being led by way of secondary evidence.



15. The issue w.r.t. precedence of the oral evidence over the documentary evidence was also pre-judged by the Trial Court. The question as to whether the ocular evidence will have to be read as subservient to the documentary evidence or that the documentary evidence stands breached by the ocular evidence, are the issues which need to be considered by the Courts while passing the final judgment and not at the stage where permission is being sought to tender the evidence. Tendering of evidence cannot be forestalled holding that the same is in the teeth of evidence already on record. Thus, the reasons assigned by the Trial Court for dismissing application filed by the plaintiff under Section 65-B of the Evidence Act are unsustainable in the eyes of law. Ergo, the impugned order is set aside.

16. In view of above, the present revision petition is allowed. The plaintiff is granted opportunity to tender electronic evidence in the form of mobile-phone as offered in the application.

17. Pending application(s), if any, shall also stand disposed off.

September 25, 2024

(Pankaj Jain)
Judge

Dpr

Whether speaking/reasoned : Yes
Whether reportable : Yes