



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

135

**CR-5188-2024 (O&M)
Decided on: 09.09.2024**

Rajwant Singh

...Petitioner

Versus

Prem Singh

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Anil Kumar Ahluwalia, Advocate
for the petitioner.

RITU TAGORE, J.

1. This revision is against the order dated 14.08.2024 (Annexure P-11) whereby learned trial Court allowed the application moved by respondent/defendant, seeking voice samples of the plaintiff for comparison with his recorded conversation with Manjit Kaur sister-in-law of the respondent/defendant.

2. Learned counsel for the petitioner submits that petitioner/plaintiff instituted a suit for recovery against respondent/defendant bearing Civil Suit No.10 of 2019 titled 'Rajwant Singh Vs. Prem Singh', based on a pronote and a receipt dated 12.01.2016. Upon receiving notice of the case, respondent/defendant appeared and filed a written statement (Annexure P-3) denying the borrowing of Rs.1,50,000/- (one lakh fifty thousand) as loan from the petitioner/plaintiff. Instead, the



respondent/defendant claimed to have borrowed only Rs.10,000/- (ten thousand) from the petitioner/plaintiff and further claimed its repayment.

3. Learned counsel submits that after the conclusion of the evidence of the petitioner/plaintiff, respondent/defendant moved an application (Annexure P-6) requesting the Court to direct the petitioner to give his voice samples for comparison with the recorded conversation with Manjit Kaur his sister-in-law. The petitioner filed reply (Annexure P-7) to the said application and learned trial Court dismissed the application vide order dated 06.07.2023 (Annexure P-8).

4. Learned counsel further submits the respondent/defendant again filed a similar application on same facts, which was resisted by the petitioner vide reply (Annexure P-10). However, the learned trial Court allowed the application in an arbitrary manner, without appreciating the fact that a similar application had been previously dismissed by the Court. Further, no such conversation was put to the witnesses of the petitioner, during their cross-examination by the respondent/defendant, and no specific time/date of said conversation has been pleaded by the respondent/defendant. Learned counsel submits that respondent/defendant wants to delay the matter, and the impugned order is indefensible in the eyes of law. A prayer is made to set it aside and allow the revision.

5. Considering the limited prayer made in this revision, notice to respondent/defendant is dispensed with, at this stage.

6. I have heard learned counsel for the petitioner and have gone through the paper book and documents appended thereto.

7. It is a matter of record that petitioner, instituted a suit (Annexure P-1) against the respondent/defendant, for recovery of



Rs.2,55,000/- (Rs.1,50,000/-, as principal amount and Rs.1,05,000/- as interest @ 2% per month from 12.01.2016 to 12.12.2018) on the basis of a pronote and a receipt dated 12.01.2016 (Annexure P-2) and permanent injunction, restraining respondent/defendant from alienating the land detailed in the plaint, with material assertions that respondent/defendant, being known to him, took a loan of Rs.1,50,000/- (one lakh fifty thousand) and executed a pronote and a receipt dated 12.01.2016 in presence of witnesses. The transaction was entered in the register of the deed writer and the respondent/defendant also agreed to pay interest @ 2% per month with further condition that respondent/defendant would repay the amount on demand by petitioner. It is claimed that the respondent/defendant failed to repay the loan despite receiving legal notice and oral demands of the petitioner/plaintiff, necessitating the petitioner to file the suit.

8. The respondent/defendant, upon being notified by the learned trial Court appeared, filed written statement (Annexure P-3), denying the assertions of the petitioner. Instead, he claimed that he had taken a loan of Rs.10,000/- (ten thousand) from the petitioner in 2003-2004. It was also claimed that petitioner/plaintiff had been residing in the house of family of respondent/defendant and taking advantage of the defendant being alcoholic, got executed a pronote and a receipt of Rs.1,50,000/- (one lakh fifty thousand). It is alleged that the pronote and the receipts of amount of Rs.1,50,000/- (one lakh fifty thousand) are without consideration. No such amount was even paid by the petitioner to him. The respondent/defendant also alleged that, after receiving summons of this case, his sister-in-law Manjit, approached the petitioner and a conversation took place between them, which was recorded by the respondent's son on his mobile. In the



recording petitioner admitted that respondent/defendant had repaid the amount. Along with the written statement the respondent/defendant, attached the recorded conversation. On these material averments, the respondent/defendant pleaded for dismissal of the suit.

9. It is a matter of record that the petitioner has concluded his evidence. It is also not in dispute that earlier also the respondent/defendant moved an application (Annexure P-6) before the learned trial Court, seeking to direct the petitioner/plaintiff to give his voice sample for comparison of same with recorded conversation, between him and Manjit Kaur sister-in-law of the defendant, which was opposed by the petitioner vide reply (Annexure P-7). The learned trial Court dismissed the application vide order dated 30.08.2023 (Annexure P-8) by observing as follows: -

“4. Perusal of the file shows that the plaintiff has filed the present suit for recovery of Rs. 2,55,000/- against the defendant. The present application has been filed by the applicant/defendant to direct the plaintiff to give voice samples for conversation of the same with the recorded conversation of the plaintiff with Smt. Manjit Kaur sister-in-law of the defendant. However, the present application is premature in time since neither any evidence has been led by the parties upto now nor the defendant has placed on record the alleged CD with which defendant wants to compare the voice sample of plaintiff. Hence, when the alleged CD has itself not been proved by the defendant, the plaintiff at this stage cannot be asked to give voice sample for comparison with something which has not been proved by the defendant nor is even on the Court file. Accordingly, the present application is dismissed.”

10. It is also undisputed that respondent/defendant again moved similar application (Annexure P-9), asking the petitioner to give his voice



samples for comparison, which was opposed by the petitioner vide reply (Annexure P-9). The learned trial Court, while allowing the application vide order dated 27.08.2024 (Annexure P-11), held as under: -

“4. Perusal of the file shows that the plaintiff has filed the present suit for recovery of Rs. 25,5000/-on the basis of pronote and receipt dated 12.01.2016 allegedly executed by the defendant in favour of the plaintiff. However, it is the stand of the defendant that the plaintiff manipulated and fabricated the document and in actuality the defendant had only borrowed a Rs.10,000/- in the year 2003-2004 when the plaintiff had been residing in the house of the defendant and did not make any payment of rent. The defendant was addicted to intoxication and the plaintiff alongwith his yes man took the defendant to the Court complex Khanna in the year 2016 and obtained his signatures on the pronote and receipt when the defendant was under influence of liquor with the understanding that the said pronote and receipt will not be used against the defendant and would be returned back when the defendant would pay the amount of Rs. 10,000/-. Hence the pronote and receipt in question was without consideration and no amount of Rs. 1,50,000/- was never paid by the plaintiff at any point of time. Now by way of the present application the defendant wants to compare the voice sample of the plaintiff with the recorded conversation of the plaintiff with Manjit Kaur sister in law of the defendant. The defendant has already put the conversation in the form of CD to the plaintiff during his cross examination and the plaintiff has denied the same. Since the defendant from the very beginning has been taking the stand that the plaintiff had never paid an amount of Rs. 1,50,000/- and it was only 10,000/- which was paid to the defendant, it is desirable that the present application is allowed to bring forth the truth before the Court which would in turn help the Court to adjudicate the present controversy at hand. However, said Manjit Kaur is not



party to the present suit and hence no voice sample of Manjit Kaur can be taken in the present case. Accordingly, the application in hand stands allowed and the plaintiff is directed to give his voice sample on the next date of hearing for comparison of the conversation between the plaintiff and Manjit Kaur recorded in the CD which is on the file. Application in hand stands allowed accordingly.”

11. From the discussed facts, it is clear that parties have conflicting claims against each other. The respondent/defendant, in the written statement, has stated that he borrowed Rs.10,000/- and not Rs.1,50,000/- as alleged in the plaint, and that he repaid the said amount. This according to the respondent/defendant is evident from the conversation held between the petitioner/plaintiff and his sister-in-law Manjit Kaur, recorded by his son in his mobile phone. The petitioner has denied this claim. An earlier application (Annexure P-5) was dismissed by the Court for being premature. The respondent/defendant, in para 5 of the application (Annexure P-9), specifically pleaded that the conversation Mark-A and CD Mark-B was put to the petitioner/plaintiff, and he denied the same, leading to filing the application. The contention of the counsel of the petitioner, that the deed writer has proved execution of the pronote and the receipt, and further, that, no date, month and year has been mentioned in the written statement or application, regarding when CD was prepared, therefore, evidence in question becomes insignificant, cannot be countenanced at this stage because all these facts must be tested on merits of the case after evaluating the evidence.

12. As noted earlier, the respondent/defendant maintains in the written statement that a conversation regarding payment of Rs.10,000/- between the



petitioner/plaintiff and his sister-in-law was recorded on the mobile of the son of the respondent/defendant. Furthermore, the facts pleaded by the respondent/defendant are in rebuttal to the petitioner's claim for recovery of Rs.2,55,000/-, as stated in the plaint. Therefore, the material evidence must be brought on record for a just and complete decision of the suit. Moreover, this is not a case where respondent/defendant seeks to introduce evidence beyond his pleaded version. Given the facts and discussion, there is no legal infirmity in the impugned order dated 14.08.2024 (Annexure P-11).

13. As a sequel to the foregoing discussion, it is held that the learned trial Court has rightly exercise the jurisdiction that vested in it and the order does not suffer from any illegality, irregularity, infirmity or perversity so as to warrant any intervention by this Court. Accordingly, the revision petition is, hereby, dismissed.

14. It be noted that the observations made above shall not be construed as an expression of opinion on the merits of the case. Same are purely confined to the present controversy and deliberations.

15. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

09.09.2024
Rimpal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No