

(2006) 04 P&H CK 0093

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 3E of 2006 and Election Petition No. 16 of 2002

Baldev Singh Mann

APPELLANT

Vs

Surjit Singh Dhiman

RESPONDENT

Date of Decision : 05-04-2006

Acts Referred:

Citation : (2006) 143 PLR 740 : (2006) 4 RCR(Civil) 198 : (2006) 4 RCR(Criminal) 127

Hon'ble Judges : K.S. Garewal, J

Bench : Single Bench

Advocate : N.S. Gill, for the Appellant; Dheeraj Jain and Vijay Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Garewal, J.—The petitioner has filed this application for summoning three witnesses. The purpose of filing the application is to establish the manner in which the video recording/CD of the speech given by the respondent was prepared.

2. According to the applicant-petitioner, it is only after the evidence of the petitioner was concluded that it was discovered by the petitioner that there was a video CD in existence which showed the respondent and Shri Gurbachan Singh Bachhi together on February 22, 2002, after declaration of the result. Therefore, when the respondent appeared as his own witness on January 3, 9 and 17, 2006, he was cross-examined as regard the visual and audio contents of the CD in question. The CD is now part of the court record.

3. The application has been opposed by the respondent on various grounds, primary ground being that the application has been moved at a very belated stage, long after the petitioner had closed his evidence, recording of which had commenced on March 5, 2004 and which continued until September 28, 2005.

4. Furthermore, in the list of witnesses furnished on January 28, (sic)204, the

petitioner had mentioned names of 54 witnesses including Jagdish Lal son of Shri Dewan Chand of Jaggi Studio, Samana Market, Dirba Mandi. This witness was to appear along-with a copy of the video recording of the victory procession/meeting held on February 24, 2002 in which the respondent and Shri G.S.Bachhi were shown together thanking the people for electing the respondent.

5. The three witnesses sought to be examined are (i) Sh. Rajinder Khanna, Proprietor Janta Radio Patiala Gate, Sangrur; (ii) Rajbir Singh s/o Maghar Singh, Harry Studio, Nabha Gate, Sangrur; and (iii) Gurdial Singh shorthand reporter Punjabi Chandigarh.

6. It is quite clear that the petitioner had known all along that a video recording had been made of the so-called victory procession. Long time has passed since the election petition was filed. The petitioner had sufficient time to locate those video recordings, place them on record and summon the witnesses.

7. Video CDs are capable of being created and the Court has to be fully convinced that the video CD recording is the original recording and has not been tampered with or in any manner are recreated or reconstructed to suit the purpose for which it is to be used.

8. The petitioner knew of the video recording of the victory procession of February 24, 2002. Therefore, the petitioner ought to have investigated whether a similar video recording of the procession taken out on February 22, 2004 was made but he did not do so. The petitioner has not summoned or examined Jagdish Lal, witness No. 9 for reasons best known to him. Now three witnesses are sought to be summoned to prove the video CD, which as has been stated earlier, is capable of being copied and re-produced with great ease. For this reason the Court should be wary from allowing such evidence to be led because it may introduce extraneous matters and doctored evidence through the back door.

9. The reasons given for delay in citing the witnesses are not at all convincing. This view is further strengthened by the fact that technology enables one to change the whole nature of visual as well audio data recorded on a CD. Unless the court is really convinced that the CD was genuine, it should not be allowed to be introduced at a late stage. It would have helped the petitioner if he had filed the CD along-with an application the very moment he realised the need for relying on it for purposes of cross examination. The respondent was cross-examined on the basis of the CD and now the petitioner seeks to prove it through the backdoor, which cannot be permitted.

10. Consequently, the application is dismissed.