

CALCUTTA HIGH COURT

Manindra Nath Sadhukhan

Vs.

Biswanath Kundu

Civil Revision Case No. 2672 of 1961

(Bachawat and Chatterjee, JJ.)

16.08.1962

JUDGMENT

Bachawat, J.

1. The defendant opposite party filed in the court below three petitions namely, (1) a petition dated 15-2-61 for a direction upon the plaintiff to admit certain facts and in default to permit the defendant to prove those facts by means of a tape recorder machine and demonstrate by mechanical process the records of an alleged conversation, (2) a petition dated 19-4-61 for an order allowing the defendant to adduce in evidence the results of alleged discussion and telephonic conversation with the plaintiff said to have been recorded in a tape recorder machine and to prove and demonstrate records before the court at the time of the hearing of the suit, (3) a petition dated 3-6-61 for an order allowing the defendant to file three reels of tapes in court and take the same back and keep them in a vault. On June 3, 1961 the defendant filed three reels of tapes in the court below. On the same day the court directed that in view of the circumstances stated in the petition dated June 3, 1961 the tape recordings be returned to the filing pleader and fixed the 8th June 1961 for orders on the defendant's petition dated February 15, 1961 and April 19, 1961. The plaintiff raised objections to the admissibility of the evidence, inter alia on the grounds that the tape recording was made behind his back and without his knowledge and that the tape record is no evidence at all. These two objections were rightly overruled by the learned Judge on the strength of the decision in *Rup Chand v. Mahabir Prosad*¹, (1. If the plaintiff, while he is in the witness box, makes a statement which is at variance with a statement previously made by him, the plaintiff may be asked whether he made such previous statement and if he denies having made the previous statement, such previous statement may be proved by the defendant. There, as in this case, it is alleged that the previous statements of the plaintiff were recorded in a tape-recorder, those statements may be admitted in evidence, if it is proved that they were made by the plaintiff and that the instrument accurately recorded those statements. The fact that the statements were recorded in a tape-recorder and the recording was made behind the

back and without the knowledge of the plaintiff is by itself no objection to the admissibility of the evidence. The plaintiff however also objected to the admissibility of the evidence on the ground that there were talks for compromise and that these talks were without prejudice and are not admissible evidence. The learned Judge overruled this

¹ A.I.R. 1956 Punj. 173

objection also on the strength of the decision in *Meajan Matabor v. Alimuddin Mean*², In our opinion the learned Judge erroneously overruled this objection at this stage. This objection raises a mixed question of law and fact and must be decided at the hearing of the suit upon the evidence taken at the trial. It is premature to overrule this at this stage. The statements recorded in the tape-recorder can be admitted in evidence only after proof that those statements were made by the plaintiff and were accurately recorded in the tape-recorder and after the court is satisfied that there is no reason for excluding the evidence under sec. 23 of the Indian Evidence Act. For the purpose of enabling the defendant to prove that the plaintiff made the statements recorded in the tape-recorder the court has power to allow the defendant to prove and demonstrate the records at any stage of the trial.

2. The order dated the 8th June 1961 is set aside in so far as it directed at this stage that "the defendant's prayer for admission in evidence of the conversation as recorded in the tape recorder is allowed". The petitions dated 15.2.61 and 19.4.61 are kept pending and the trial court will be at liberty to pass such orders as it thinks fit at the hearing of the suit.

3. The order dated the 8th June 1961 is hereby affirmed in so far as it directed the following:

The deftd. had filed the tapes in which the recording was made but by a petition prayed for returning those tapes to him for being scientifically preserved. I have already permitted the deftd. to take back these tapes and the tape-recording machine as it would not be safe to keep those things in the court's almirah here. I was told that in Calcutta vaults are available for proper preservation of these tape recordings. The defendant is directed therefore to place these tape recordings, in a suitable vault at Calcutta, in the name of this court and submit proof of the same by way of receipt or otherwise to this court within a week from date showing that the tape recordings have been so kept in proper vault as the tape recording must be considered to be in custody of the court.

4. This part of the order will be treated as having been passed on the petition dated 3-6-61.

5. The Rule is disposed of accordingly. Each party will pay and bear his own costs.

6. Let the records be sent down as early as possible. Let the suit be heard as expeditiously as possible.

Chatterjee, J.

8. I agree.

²(1916) 20 C.W.N. 1217