

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

107

**CRR No.917 of 2015.
Date of Decision: 17.03.2015.**

Ombir alias Sonu

....Petitioner.

Vs.

State of Haryana

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate for the petitioner.

Sneh Prashar, J.

The instant revision petition was filed assailing the order dated 10.02.2015 passed by learned Additional Sessions Judge, Rohtak, whereby the application filed by petitioner Ombir alias Sonu to summon the case diary was rejected.

2. Heard the submissions made by learned senior counsel representing the petitioner.

3. At the very outset, learned counsel for the petitioner referred to the statement of ASI Jai Bhagwan recorded on 11.03.2010. ASI Jai Bhagwan had handled the investigation at the initial stage. Learned counsel pointed out that in his statement the said witness deposed that Rukmani wife of Risal Singh had come at the spot after he had reached there. On the other hand, after additional accused Indu and Seema were summoned under

Section 319 of the Code of Criminal Procedure, 1973 (in short, “Cr.P.C.”) and the trial commenced, again ASI Jai Bhagwan was examined on 20.02.2014 and in his statement at the said stage he did not state that Rukmani wife of Risal Singh had come at the spot during investigation by him. Learned counsel contended that in view of the testimony in the statement of ASI Jai Bhagwan, the petitioner-accused had filed an application for summoning of the police diary where the factum of presence of Smt. Rukmani on the spot was recorded.

Learned counsel asserted that summoning of the police file was essential for just and proper adjudication of the case and summoning of the police file will cause no prejudice to the case of the prosecution whereas the petitioner-accused will suffer irreparable loss. To support his argument that the court has vast power to call for document including case diary at the instance of the accused if production was necessary for just decision of the case, learned counsel relied upon ***Dhananjay Kumar Singh vs. State of Rajasthan, 2006(4) R.C.R. (Criminal) 163.***

4. Before going into the issue raised, it shall be relevant to reproduce Section 172 Cr.P.C. for ready reference:

“Diary of proceedings in investigation. (1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited 891 by him, and a statement of the circumstances ascertained through his investigation. (2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. (3) Neither the

accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court ; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.

5. Apparently, sub section 2 of Section 172 Cr.P.C. relates to production of police diaries in the court during an inquiry or trial and it is clear from the provision that it is the Criminal Court who may send for the police diaries of a case under inquiry or trial. The such diaries are not to be used as evidence but the Court can use the same for assistance in the inquiry or trial. Thus, the police diaries are not to be called as evidence in the case and are to be used only to aid the Court into the inquiry or trial. There are no two thoughts over the proposition of law referred to by learned counsel for the petitioner. However, in ***Dhananjay Kumar Singh vs. State of Rajasthan, 2006(4) R.C.R. (Criminal) 163*** it was held that the Court has the power to call for case diary or other document under Section 91 Cr.P.C. at the instance of the accused, however, the case diary can be used by the accused only for the limited purpose laid down under Section 172(3) Cr.P.C. In short, the case diary can be used by the accused only for the purpose of drawing attention of the witness to the part which is to be used for contradicting him. Similarly, in ***State vs. Mukesh Kumar, 2014(9) R.C.R. (Criminal) 1508*** it was held that no court will deny to itself the power to make use of the entries in the diary to the advantage of the accused by contradicting the Police Officer with reference to the contents of the diary.

6. The facts in hand are totally distinguishable. The petitioner-

accused had filed application not for production of the case diary, not for drawing the attention of any witness to any part which he wanted to use for contradicting him but he had initiated the application at the stage of defence evidence to prove presence of witness examined by him during trial. Certainly, in such circumstances, the police diary was not to be called for collecting evidence for the accused.

Thus, finding no ground for intervention in the order of learned trial court, the revision is dismissed.

(SNEH PRASHAR)
JUDGE

March 17, 2015.

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