

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

**CRR No.2383 of 2015 (O&M)**  
**Date of Decision: 31.03.2016**

**Reetu Setia**

...Petitioner

**Versus**

**State of Punjab**

...Respondents

**with**

**CRR No.3249 of 2015 (O&M)**

**Jyoti Chugh**

...Petitioner

**Versus**

**State of Punjab**

...Respondent

**CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest? No

Present: Mr. Jagjit Gill, Advocate  
for the petitioner in CRR-2383-2015.

Mr. VPS Sidhu, Asst. A.G., Punjab.

Mr. Navratan Singh, Advocate for  
Mr. Navkiran Singh, Advocate  
for the complainant in CRR-2383-2015 &  
for the petitioner in CRR-3249-2015.

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**ANITA CHAUDHRY, J.**

These are two revisions filed against the order dated 01.06.2015, vide which the Addl. Sessions Judge, Bathinda partly allowed the application filed by the accused. Crl. Revision No.2383 of 2015 has been filed by the accused Reetu Setia whereas Crl. Revision No.3249 of 2015 has been filed by the complainant Jyoti Chugh.

It is necessary to give the backdrop. An FIR was registered on the statement made by the prosecutrix. The police had filed the challan. Accused Reetu Setia approached this Court for quashing of the FIR. However, the petition was withdrawn and liberty was granted to the petitioner to raise all the pleas before the trial Court. At the trial an application was filed by accused Reetu Setia seeking to summon the attendance register and the CCTV footage of 12.09.2013 from State Bank of India, Bathinda at the stage of framing of charge. The prayer made by the accused was that these documents would prove her innocence.

The claim of the accused-petitioner was that she had been falsely implicated and she was not involved and she was on duty in the bank on 12.09.2013. She wanted to summon the attendance register and the CCTV footage of the bank. The trial Court rejected the prayer of summoning the CCTV footage, relying upon the judgment in ***Debendra Nath Padhi 2005(1) RCR (Crl.) 297***. However, it allowed the accused to place the attendance register on the record.

The issue, which has to be examined is whether the Court can look into the defence material or whether the record can be summoned at the instance of the defence at the stage of framing of charge.

The counsel for the petitioner/accused placed on record the copy of the application filed by them and vehemently urged that there was no absolute bar to consider the documents produced by the accused at the stage of framing of charge and the Apex Court in a later judgment had held that the Court was justified to look into the matter produced by the defence if the material establishes that the prosecution story is absurd and concocted. The counsel submitted that the documents sought to be summoned by them would prove that the petitioner-accused was innocent. It was urged that the prosecution has to be fair and impartial and the discretion rests in the Court and it can summon the record and that would expose the falsity of the allegations levelled by the complainant. It was urged that the Court can exercise the power under Section 91 Cr.P.C. when it finds it necessary and desirable. Reliance was placed upon ***M.L. Meena Vs. State (CBI) 2015(220) DLT 78, Rukmini Narvekar Vs. Vijaya Satardekar & Ors. 2011 AIR (SC) Cri) 1825, Suresh Kalmadi Vs. CBI 2015(3) JCC 1874, Kamal Ahmed Mohammed Vakil and Ors. Vs. State of Maharashtra 2013(2) Bom.CR (Cri.) 217 and Munnalal Vs. State of M.P. 2010(1) MPHT 280.***

On the other hand, the submission of the State as well as the complainant is that there can be no appreciation of evidence at the stage of framing of charge and charge can be framed on the basis of strong suspicion and the accused have no right to produce any material or ask the Court to summon any record as it would amount to a mini trial. It was urged that a Larger Bench comprising of three Judges had held that the accused had no right to produce any material and the accused cannot seek aid of Section 91 Cr.P.C. at that stage. Reliance was placed upon ***Palwinder Singh Vs. Balwinder Singh and others 2009 AIR (SC) 887, State of Orissa Vs. Debendra Nath Padhi 2005(1) RCR (Criminal) 297, V.K. Mehta Vs. State of Haryana and another 2005(3) RCR (Criminal) 753 and Gopi Chand Vs. Devender Mangla and others 2006(4) RCR (Criminal)320.***

The FIR had been registered on a complaint made by the prosecutrix. The accused has been challaned and the case was committed. The accused had approached the High Court for quashing of the FIR but had later got the petition dismissed as withdrawn on 12.01.2015. The case was fixed for framing of charge when an application was moved by accused for summoning the attendance register and the CCTV footage from State Bank of India of 12.09.2013 and prayer made by her is that the footage should be seen as that would prove her innocence. The plea raised by the petitioner is that she was performing her duty till 7:30 PM on that day and she was not present with Puneet on the day of occurrence.

A perusal of the order brings out the facts. The allegations by the victim were that Puneet Kumar, (cousin of accused Ritu Setia) developed physical relations with her and promised marriage in front of the petitioner but later on she (complainant) came to know that Puneet was already married and had a child and it was by mis-representation, he had physically violated her. Puneet threatened to upload her pictures on the net to defame her. The prosecutrix had attempted to commit suicide and was admitted in the hospital. The allegations are that petitioner Ritu called the prosecutrix on 12.09.2013 on the pretext that she would return all the photographs and would deliver the MMS and on her asking she came to Bathinda where the petitioner Ritu took her to Puneet and Puneet again ravished her. The allegations against accused Puneet were that he had raped her on more than one occasion.

The Apex Court in State of ***State of Orissa Vs. Debendra Nath Padhi 2005(1) RCR (Criminal) 297*** had overruled the earlier judgment rendered in ***Satish Mehra Vs. Delhi Administration 1996(3) RCR Criminal 410 (SC)***. Having regards to the views expressed in Satish Mehra's case, it was directed that the matter should be referred to a Larger Bench. The order referring the matter to the Larger Bench was reported in ***State of Orissa Vs. Debendra Nath Padhi 2003(2) RCR (Criminal) 116***. The three Judges Bench while examining the provisions of Criminal Procedure Code also referred to the judgment rendered in ***Superintendent and***

***Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and others (1979)4 SCC 274***, wherein it was

held that the Magistrate at the stage of framing the charge had to see whether the facts alleged and sought to be proved disclosed an offence prima facie on general consideration of the material placed before him by the Investigating Officer. The specific question raised there was whether an accused at the stage of framing of charge had a right to produce any material. It was ultimately held as under:-

*“23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. **Satish Mehra's case** holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.”*

With respect to the contention as to whether the documents could be summoned under Section 91 Cr.P.C., it was held:-

*“28. We are of the view that jurisdiction under Section 91 of the Code when invoked by accused the necessity and desirability would have to be seen by the Court in the context of the purpose – investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry.”*

In Rukmini Narvekar's case (supra), a two Judges Bench had held that ordinarily defence material cannot be looked

into by the Court while framing the charge. However, in some very rare cases the Court can justify in looking into the material produced by the defence. It was observed as under:-

“28. We have carefully perused the decision of this Court in the [State of Orissa vs. Debendra Nath Padhi](#) (supra). Though the observations in paragraph 16 of the said decision seems to support the view canvassed by by Shri Rohatgi, it may be also pointed out that in paragraph 29 of the same decision it has been observed that the width of the powers of the High Court under [Section 482](#) of Cr.P.C and [Article 226](#) of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of the court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal's case (supra). Thus we have to reconcile paragraphs 16 and 23 of the decision in [State of Orissa vs. Debendra Nath Padhi](#) (supra). We should also keep in mind that it is well settled that a judgment of the Court has not to be treated as a Euclid formula vide [Dr. Rajbir Singh Dalal vs. Chaudhari Devi Lal University, Sirsa & Anr.](#) JT 2008(8) SC 621. As observed by this Court in [Bharat Petroleum Corporation Ltd. & Anr. vs. N.R. Vairamani & Anr](#) AIR 2004 SC 4778, observations of Courts are neither to be read as Euclid's formula nor as provisions of the statute. Thus in our opinion while it is true that ordinarily defence material cannot be looked into by the Court while framing of the charge in view of D.N. Padhi's case (supra), there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into

by the Court at the time of framing of the charges or taking cognizance.

29. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. We agree with Shri Lalit that in some very rare cases the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted.

30. However, in this case it cannot be said that the evidence in the Civil Suit which was produced by the defence before the trial court established convincingly that the prosecution case is totally absurd or preposterous. In our opinion this is a matter which has to be looked into by the trial Court.”

The petitioner-accused seeks summoning of the attendance register of a bank where she was working. The authenticity of the document would have to be proved at the trial. So far as the CCTV footage is concerned, it is not a perse admissible document nor is a material which can be examined without the certificate as required under Section 65-A of the Information Technology Act. The Court can not hold a mini trial at this stage. The three Judges Bench in Depender Nath Padhi's case in 2005 had held that the accused have no right to produce any

document. It cannot even be said that this is a very rare case where the Court was justified in allowing the defence to produce the attendance register.

The trial Court had partly allowed the application and had permitted the accused to place on record the attendance register which could not have been done, therefore, the impugned order of allowing the accused to place on record the attendance register is set aside and the petition CRR-3249-2015 is allowed whereas CRR-2383-2015 is dismissed.

The trial Court would proceed with the trial as expeditiously as it has been delayed.

**(ANITA CHAUDHRY)**  
**JUDGE**

**31.03.2016**  
*'Sunil'*