

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 178 of 2016

Order Reserved on : 06.07.2017

Order Passed on : 08.08.2017

Sushil Agrawal, S/o. Vishnu Prasad Agrawal, Aged About 42 Years, R/o. State Bank Colony, Mahoba Bazaar, Tatibandh, Police Station -Amanaka, Raipur, District Raipur (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh, Through : The Secretary, Department Of Home, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
2. The Station House Officer, Police Station Gol Bazaar, Raipur, District Raipur, Chhattisgarh.
3. The Station House Officer, Police Station Tikrapara, Raipur, District Raipur, Chhattisgarh.
4. Dinesh Gomasta, S/o. Atul Gomasta, aged about 35 years, Occupation- Business (Registered Transporter), R/o. Ward No.1, Bangali Camp, Kirandul, P.S. - Kirandul, District – Dantewada (C.G.).
5. Balai Das, S/o. Ramani Mohan Das, aged about 33 years, Occupation- Driver, R/o. West Borgaon, P.S. - Parasgaon, District – Kondagaon (C.G.).

-----Respondents

For Petitioner	: Mr. Sumesh Bajaj, Advocate
For Respondent/State.	: Mr. Ashish Shukla, Govt. Advocate
For Intervener	: Mr. Rajeev Shrivastava, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

08/08/2017

1. This petition under Article 226 of the Constitution of India has been brought seeking exercise of supervisory jurisdiction for setting-aside

the impugned order dated 15.07.2016, passed by 1st Additional Sessions Judge, Raipur in S.T. No.304/2013, in proceedings of trial and also for direction for conducting an enquiry by independent agency against the prosecution agency for taking frivolous and contrary stands contrary to the official record.

2. It is submitted that one Balai Das lodged one FIR on 07.09.2013 on the basis of which, offence under Section 364, 365 and 506 read with Section 34 of Indian Penal Code were registered against five persons. The petitioner was not named in the FIR. During the investigation, petitioner and two others have been added as an accused for the offence of conspiracy with respect to the commission of alleged crime and Section 120B of I.P.C. was also added. It is alleged in the prosecution story, a conspiracy was hatched on 06.09.2013 for kidnapping of one Bittu Rai, who was a witness in previous criminal case with purpose to coerce to retract from the statement earlier given by him before the Court. On the basis of material in the charge-sheet, petitioner has been charged with offence punishable under Section 120-B, 506, 364/34 and Section 365/34 of Indian Penal Code. It is further submitted that petitioner had two mobile numbers bearing subscriber No. 9425532000 and 9329965111, call details of these mobile numbers are relevant in this case to show the location of the petitioner on the date of alleged incident. One of this mobile was seized on 05.09.2013 and second mobile was seized on 07.09.2013. Petitioner relies on the evidence of call details to falsify the case of the prosecution.

3. Petitioner filed an application on 05.11.2015, before the First Additional Sessions Judge, Bilaspur with prayer to call for the call details of mobile numbers held by him. This application was opposed by the State. This application was rejected by the order dated 23.02.2016 by the trial Court holding that it is the burden of petitioner himself to produce the call details and prove his defence accordingly.
4. Petitioner again filed an application on 14.07.2016 requesting of calling of call details with location with respect to the mobile numbers possessed by him, which was again opposed by the prosecution, which has not been decided by the trial Court and the application has been kept pending to be heard on 08.08.2016 and 09.08.2016 along with recording of evidence of prosecution.
5. It is submitted that Ratneshwar Rao (P.W.-4) has stated that accused Uttam talked with petitioner on mobile phone. Sub-Inspector, Mohd. Kalim Khan (P.W.-14) in this case has also stated in his cross-examination that he has made use of the call details of the mobile number to find out the location. Reliance has been placed in the judgment of Hon'ble Supreme Court in case of **V.K. Sasikala Vs. State Rep. by Superintendent of Police**, reported in **AIR 2013 SC 613**, in which it was held that mandatory duty is cast on the investigating agency to conduct fair investigation. Document submitted in the Court along with report under Section 173 of Cr.P.C. ought to be disclosed to the accused if demanded as it is required for the doctrine of free and fair trial, placing specific reliance on para -17 of the judgment, which is quoted as under :-

“17. The issue that has emerged before us is, therefore, somewhat larger than what has been projected by the State and what has been dealt with by the High Court. The question arising would no longer be one of compliance or non-compliance with the provisions of Section 207 Cr.P.C. and would travel beyond the confines of the strict language of the provisions of the Cr.P.C. and touch upon the larger doctrine of a free and fair trial that has been painstakingly built up by the courts on a purposive interpretation of Article 21 of the Constitution. It is not the stage of making of the request, the efflux of time that has occurred or the prior conduct of the accused that is material. What is of significance is if in a given situation the accused comes to the court contending that some papers forwarded to the Court by the investigating agency have not been exhibited by the prosecution as the same favours the accused the court must concede a right to in the accused to have an access to the said documents, if so claimed. This, according to us, is the core issue in the case which must be answered affirmatively. In this regard, we would like to be specific in saying that we find it difficult to agree with the view taken by the High Court that the accused must be made to await the conclusion of the trial to test the plea of prejudice that he may have raised. Such a plea must be answered at the earliest and certainly before the conclusion of the trial, even though it may be raised by the accused belatedly. This is how the scales of justice in our Criminal Jurisprudence have to be balanced.”

6. Reliance has also been placed on the judgment of Supreme Court in case of ***Sidhartha Vashisht @ Manu Sharma Vs. State (N.C.T.***

of Delhi) reported in **AIR 2010 Supreme Court 2352** and in case of **Radhey Shyam and Another Vs. Chhabi Nath and Others** reported in **(2015) 5 Supreme Court Cases 423**.

7. Counsel for the State has opposed the petition and the arguments submitted in this behalf. It is submitted that the application of petitioner has been rightly rejected. It is the burden on the petitioner as accused in the case to being proved in support of his defence. The call details of the mobile numbers held by the petitioner have not been procured and made use of by the investigation agency. The statement given by the Sub-Inspector Mohd. Kalim Khan (P.W.14) is not specific and connected with the mobile numbers mentioned by petitioner. Hence, prosecution is not placing reliance on the call details of the mobile held by the petitioner. For this reason, the prosecution is not bound to supply or call for the required information. Prayer has been made to dismiss the petition.
8. Counsel for the intervener has adopted the argument submitted by State.
9. Looking to the main contention of the petitioner that his application for calling of the call details and location details be called and produced on record, the question for determination stands narrowed down to this extent only. As per the statement made on behalf of the State and the material on record, it is clear that the prosecution is not placing reliance on the call details concerned with the mobile numbers held by the petitioner. The ground of objection raised for opposing the application of the petitioner is cogent and relevant because it is with the help of call details, the petitioner wants to

establish and prove his defence, hence the burden is cast on the petitioner to collect and produce the documents required for his defence. As petitioner claims to be holder of the subscriber number of the concerned mobile network company, hence on his request, the mobile network company can provide him call details and necessary details without breaching the confidentiality with data preserved safely in the server of the mobile networking company.

10. Hence, it is for these reasons, it appears that it is not a case, where jurisdiction under Article 226 of the Constitution of India needs to be exercised as it is clear from the status of the criminal case, the investigation has already been completed and the case is being heard at the stage of recording of evidence. Hence, the stage of making prayer for fair investigation is passed and the stage of contesting the case and proving the defence of the petitioner is currently going on. After due consideration, it is found that this petition is without any substance and it is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram