

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

**CRM No.34239 of 2016 in/and
CRR No.4001 of 2016 (O&M)
Date of Decision: November 03, 2017**

Prem

...Petitioner

VERSUS

The State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Harsh Vardhan Shehrawat, Advocate
for the petitioner.

Mr.Kuldeep Sharma, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

CRM No.34239 of 2016

Learned counsel for the petitioner wants to withdraw the
present application.

Dismissed as withdrawn.

CRR No.4001 of 2016

The present revision petition has been filed by petitioner
against respondents, challenging the impugned order dated 29.09.2016 vide
which the application filed by the petitioner-accused under Section 91
Cr.P.C. was dismissed.

Notice of motion was issued. Learned State counsel appeared
and contested the petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that during the pendency of the trial, an application under Section 91 Cr.P.C. was filed by the accused-petitioner for preserving the Call Detail Record and call location chart of mobile phone belonging to complainant bearing No.98127-23985 of Idea Cellular Limited. It is stated in the application that accused wants to prove the CDR and call location chart of the mobile phone of the complainant in his defence evidence. It is also alleged that according to laws of Telecom Department, the record of CDR is kept for one year. Lastly, it is alleged that to prove the defence version, the proof of CDR and call location chart of the mobile phone of the complainant is very essential. Prayer is made in the application to direct the Nodal Officer of Idea Cellular Limited Company to preserve the call detail record and location chart of the mobile of the complainant from the period w.e.f. 01.08.2015 to 10.08.2015.

Reply was filed by the prosecution, in which it is stated that there was no requirement during the process of investigation regarding call details and tower location and thus, those were not collected by the police. It is further stated that the Incharge, Cyber Cell, Bhiwani was contacted on the said application as per the direction of this Court, who told that the period more than one year has been spent and thus, the call details and tower location of the impugned mobile number cannot be collected.

Learned trial Court, taking in view this fact that call detail record is maintained only for one year, as per reply, dismissed the application.

From the record, I find that the accused wanted to prove the call

detail record as well as tower location chart of the mobile phone of the complainant in his defence, which he says, is necessary to prove his defence. Merely, on the reply of the prosecution that they have contacted Idea Cellular Ltd. and they stated that they maintain the call detail record only for one year, is no ground to dismiss the application. The finding of learned trial Court that the applicant-accused himself can collect the call detail record etc. is not as per law. The case is under Section 302 IPC etc. To do substantial justice between the parties and to give fair opportunity to the parties, the Court below should have called the witness from the Idea Cellular Ltd. to get enquired whether the call details are available or have been destroyed. If the same have been destroyed, then the matter ends but if these are still available and have not been destroyed, then the Court can direct the company to preserve the same till the decision of the case.

In view of the above discussion, I find that the impugned order dated 29.09.2016 passed by learned Addl. Sessions Judge, Bhiwani, is not as per law and the same is set aside. Finding merit in the present revision petition, the same is allowed. The application filed by the petitioner-accused under Section 91 Cr.P.C. is allowed. It is ordered that learned trial Court will summon witness from the Idea Cellular Ltd. to get produced the record, if it is not destroyed and if the record is produced, then to give direction to the company to preserve the same till the decision of the case.

November 03, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No