

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-16142-2017

Date of decision : 06.03.2018

Navneet Aggarwal

... Petitioner

VERSUS

State of Punjab and anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Aayush Gupta, Advocate, for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

RAJ SHEKHAR ATTRI, J.(Oral)

On 23.05.2017, fresh notice was issued to respondent No. 2.

The same has been duly served but none has put in appearance on behalf of respondent No. 2 till date. Therefore, respondent No. 2 is proceeded against ex-parte.

This is a petition under Section 482 Cr.P.C. for quashing of order dated 3.4.2017 passed by learned Judicial Magistrate Ist Class, Ludhiana vide which the defence evidence of the petitioner/accused was closed by passing following order:-

'DW is present but did not enter into witness box for cross examination neither cost is paid. In this case statement of accused u/s 313 Cr. P.C. was recorded on 18.08.2016 and the case was fixed for defence evidence of accused to conclude its entire defence evidence. Ld. Counsel for the accused requested one more opportunity. But keeping in view the above circumstances no plausible explanation has been put forth by the Ld. Defence counsel for the accused for not adducing his defence evidence. Though I do not find any justification to grant any further opportunity to the accused to adduce his

defence evidence but on request of accused, taking lenient view only oral defence evidence of the accused is closed by order of the Court. Now to come up on 10.04.2016 for documentary evidence and for arguments.'

Heard.

While holding the criminal trial, a Judge has to keep in mind the principle of fair trial. To the mind of this court, a fair trial is the heart of the criminal jurisprudence. It is well settled that denial of fair trial is crucifixion of human rights. Equally, this is an integral part of a democratic polity which is governed by Rule of Law, which has been ingrained in the concept of 'due process of law'. While emphasizing the principle of fair trial and the practice of the same in the course of trial, it is obligatory on the part of the courts to see as to whether in an individual case or category of cases, because of non-compliance of a certain provision or denying a party a right to lead evidence of his choice will amount to denial of justice. Hon'ble Supreme Court in ***Zahira Habibullah Sheikh and another vs. State of Gujarat (SC) 2006 (2) RCR (CrL) 448*** has made the following observations:-

“The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. Whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at

large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.”

Closing of evidence, in the circumstances of this case, will certainly amount to denial of opportunity to the accused to produce his evidence. The defence witness was present and his evidence was partly recorded and case was to be fixed for cross-examination. It was duty of the Magistrate to call the said witness, even by using coercive methods. It seems that the learned Magistrate did not apply his mind and failed to appreciate the material available on the record. This Court is of the considered opinion that the impugned order suffers from infirmity and illegality. As such the same is not sustainable in the eye of law. Consequently, the same is set aside with a direction to trial court to summon the witness whose examination-in-chief has been recorded and give another opportunity to the petitioner to conclude his evidence.

Accordingly, the present petition is allowed.

(RAJ SHEKHAR ATTRI)
JUDGE

March 06, 2018
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No