

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

**Criminal Misc.No.M-1844 of 2018(O&M)
Date of Decision : 18.01.2018**

Ranvir Singh

..... Petitioner

Versus

Sat Bhama Devi

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Sunny K.Singla, Advocate for the petitioner.

RAJ SHEKHAR ATTRI, J. (Oral)

The petitioner has preferred the instant petition for quashing/setting aside the order dated 16.12.2017 (Annexure P-9), passed by the learned Judicial Magistrate Ist Class, Malerkotla in complaint No.83 dated 14.08.2012, titled as 'Sat Bhama Devi vs. Ranvir Singh and others' under Sections 447, 341, 323, 324, 506, 148, 149 IPC, vide which that Court has wrongly allowed the application filed by respondent for recalling witnesses i.e. CW1 to CW3 for further examination-in-chief.

The facts of the case are lie in narrow compass. Complainant Sat Bhama Devi filed a criminal complaint under Sections 447, 341, 323, 324, 506, 148, 149 IPC. In preliminary evidence, statements of CW1 to CW3 were recorded. After recording preliminary evidence, learned Magistrate summoned all the accused to face trial for the abovesaid offences vide order dated 27.10.2016.

After appearance of the accused, the abovesaid witnesses again appeared. However, all the aforesaid witnesses suffered statement that their previous statements which were recorded in preliminary evidence should be read/considered and they do not want to give any other statement. Although, this part of statement was strongly objected by all the accused on the ground that examination-in-chief was not recorded in

their presence, as such, statements of said witnesses given in preliminary evidence stage cannot be read as their examination-in-chief. It seems that learned Magistrate did not apply his judicial mind and failed to consider the provisions of Section 241 read with Section 273 Cr.P.C. and directed them to cross-examine, and as such, the cross-examination of said witnesses was conducted.

However, the complainant moved an application (Annexure P-7) for recalling the said three witnesses on the ground that after summoning of the accused their examination-in-chief were not recorded in the presence of accused due to the oversight and inadvertent omission on the part of the previous counsel of the complainant and also inspite of the objection taken by the counsel for the accused, they be re-examined.

The said application was contested on the ground that complainant wants to fill up the lacuna. However, this application was allowed vide impugned order dated 16.12.2017, subject payment of costs of Rs.2,000/- to be paid by the complainant to the opposite party.

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

While holding the criminal trial, a Judge has to take in mind *inter alia* the following factors:-

- (a) providing the fair trial;
- (b) the role of the Judge while holding a criminal trial

So far as providing a fair trial is concerned, 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. It

is 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 whether in an individual case or category of cases, because of non-compliance of a certain provision, reversion of judgment of conviction is inevitable or it is dependent on arriving at an indubitable conclusion that substantial injustice has in fact occurred.

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.”

Secondly, it is well settled that a Judge, while conducting a criminal trial, is not merely a mook spectator. A criminal trial is a search of act and infact search of truth. Therefore, a Judge has to intervene as and when required, especially to rule out his illegalities, irregularities or infirmities and also the inadmissible evidence but in the case in hand the Magistrate shut his eyes to the objections raised by the accused.

In the case in hand, the statements of witnesses were recorded in a complaint case under the provisions of Section 200 Cr.P.C. Thereafter, summons were issued under the provisions of Section 204 Cr.P.C. to the accused to face trial.

After appearance of the accused, it is mandatory for the Magistrate to record the evidence afresh in the presence of accused or their counsel as the case may be. The evidence recorded before summoning the accused i.e. at the pre-summoning stage is not admissible into evidence and the same cannot be taken into consideration against the accused. The learned trial Magistrate has adapted the procedure which is foreign to law.

It is settled provisions of law that no prejudice can be caused to any person due to the fault of the court. Under Section 244 Cr.P.C., the Magistrate has obliged to proceed to hear the prosecution and all such evidence as may be produced in support of the prosecution in a case instituted otherwise than on a police report. The evidence must be recorded in the presence of accused as required under the provisions of Section 273 Cr.P.C.

By recalling the witnesses, the illegality and irregularity can be cured. It will not cause any prejudice to the accused.

Learned counsel for the petitioner has relied upon the judgments in Sridhar Das vs. State of W.B. 1996 Criminal L.J. 813; Baldev Singh vs. State of Punjab 2007 (3) RCR (Criminal) 826 and State of Haryana vs. Ram Mehar and others 2016 (4) PLR 824. The said judgments, having distinguishable facts, will not apply in the instant case.

The impugned order does not suffer from any illegality and infirmity and the same does not warrant any interference by this Court.

As a sequel of abovesaid discussion, the instant petition is devoid of any merit and the same is dismissed.

18.01.2018
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(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No