

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

CRM No.M-28175 of 2016 (O&M)

Date of Decision: August 24, 2018

Arvind Parkash Verma

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sunil Chadha, Senior Advocate with
Ms.Swati Verma, Advocate
for the petitioner.

Mr.Pawan Sharda, Sr. DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of order dated 02.08.2016 passed by learned Addl. Sessions Judge, Ludhiana, vide which, the application filed by the petitioner under Section 91 Cr.P.C. for summoning the record from various mobile companies, which was ordered to be preserved vide orders dated 11.02.2010 and 08.04.2010 passed by learned Addl. Sessions Judge, Ludhiana, 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.

The perusal of the record shows that challan has been presented against the present petitioner and before stage of consideration on charge, an application was filed by the accused-petitioner for summoning record from various mobile companies, which was ordered to be preserved vide orders dated 11.02.2010 and 08.04.2010. Learned Addl. Sessions Judge, Ludhiana, after considering the law, dismissed the application vide impugned order dated 02.08.2016. Aggrieved from the order dated 02.08.2016, present petition has been filed.

After hearing the arguments of learned senior counsel for the petitioner as well as learned State counsel, I find that it is settled law that defence of the accused is not to be considered at the time of consideration on the charge. If the defence of the accused is to be considered at this stage and accused is discharged, then it will amount to disbelieving the version of the prosecution and accepting the defence without any evidence produced by the parties on record. The application under Section 91 Cr.P.C. for summoning the record etc., for consideration of the Court at the time of framing of charge etc., does not lie. In the present case, record of mobile companies has already been ordered to be preserved vide orders dated 11.02.2010 and 08.04.2010, which is to be considered at appropriate stage i.e. by cross-examining the witnesses or at the defence stage but this evidence, at the time of consideration on charge, cannot be considered. To rely upon this record, the petitioner-accused is first to produce the evidence of the witnesses to prove the call details and further to prove that these mobile phones were with the police etc. and belong to them. As no evidence can be produced before the consideration of charge, therefore, this

evidence cannot be summoned.

The perusal of the record also shows that in the present case, challan has been presented a long time ago and the petitioner is filing these kind of applications and he is trying his level best to delay the trial and he has also succeeded in that. In the present case, challan was presented on 22.09.2009 and supplementary challan was presented on 09.09.2010. Till today, arguments for consideration on charge, have not been addressed so far.

Learned counsel for the petitioner has relied upon the judgments passed by the Hon'ble Supreme Court of India in ***Satish Mehra vs. Delhi Administration, 1996(3) RCR (Criminal) 410, State of Orissa vs. Debendra Nath Padhi, 2005(1) RCR (Criminal) 297, Rukmini Narvekar vs. Vijaya Satardekar and others, 2008(4) RCR (Criminal) 924, Nitya Dharmananda @ K. Lenin and another vs. Sri Gopal Sheelum Reddy Also known as Nithya Bhaktananda and another, 2018(1) RCR (Criminal) 774, Harshendra Kumar D. vs. Rebatilata Koley etc., 2011(1) RCR (Criminal) 887*** and also on the judgment passed by the Hon'ble Delhi High Court in ***Pratima Srivastava vs. State of NC of Delhi, 2015(26) RCR (Criminal) 166***. I have gone through the above-cited judgments and none of the same will apply to the facts of the present case. Rather, the judgment cited by learned counsel for the petitioner passed by Hon'ble Supreme Court in ***State of Orrisa vs. Debendra Nath Padhi, 2005(1) RCR (Criminal) 297***, clearly states that at the time of framing charge or taking cognizance, the accused has no right to produce any material. Accused also cannot seek aid of Section 91 Cr.P.C. at this stage. It is also stated that Section 91 Cr.P.C. is not available to accused to seek production of documents at the stage of framing of charge. In that case, Hon'ble Apex Court has also held that trial

Court has no jurisdiction to allow the accused to produce any document at the stage of framing of charge. However, power of the High court under Section 482 Cr.P.C. and Article 226 of the Constitution of India, 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 any Court or otherwise to secure the ends of justice.

Further, I find that at the time of framing of charge, the Court is only to see whether prima facie case is made out from the statements and documents relied upon by the prosecution in the report under Section 173 Cr.P.C. The Court is not to weigh the evidence at this stage for the purpose of conviction. The Hon'ble Supreme Court has further held in the judgment passed in ***Rukmini Narvekar's case (supra)***, as under:-

“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.”

But in the present case, whatever evidence petitioner wants to summon, will not itself prove that total case of the prosecution is absurd or preposterous or concocted. As already discussed, the evidence which the petitioner wants to summon, is firstly to be proved by bringing witnesses,

which cannot be allowed at this stage. Only public documents to which presumption of truth attaches or which are per se admissible in evidence and are beyond suspicion or doubt in the rare cases, can be looked into.

All the judgments cited by learned counsel for the petitioner do not apply to the facts of the present case. The impugned order dated 02.08.2016 passed by learned Addl. Sessions Judge, Ludhiana, in no way, can be held as illegal or against the law and it cannot be held that passing of order dated 02.08.2016 amounts to abuse of process of law or miscarriage of justice.

Therefore, finding no merit in the present petition, the same is dismissed.

However, learned trial Court is directed to hear the arguments for the purpose of consideration on charge as per law without any delay. If any other application is filed by the accused-petitioner, then that may be decided by conducting day-to-day proceedings. Learned trial Court is further directed to send the status report to this Court after three months from today.

August 24, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No