

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRM-M-32901-2018 (O&M)
Date of Decision: 2.8.2018

Amit Vasudev

.....PETITIONER(s).

VERSUS

State of Punjab

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Jasraj Singh, Advocate
for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

RAJ SHEKHAR ATTRI, J.(Oral)

This is a petition under Section 482 of Code of Criminal Procedure for setting aside order dated 13.7.2018 (Annexure P-6) passed by learned Judge, Special Court, Jalandhar whereby cross-examination of a material witness namely ASI Nirmal Singh has been ordered to be treated as Nil emanating from case FIR No.263 dated 14.10.2017 registered at Police Station Adampur, District Jalandhar (Rural) under Section 21 of Narcotic Drugs and Psychotropic Substances Act.

Notice of motion.

On the asking of the Court, Mr. Saurav Khurana, DAG, Punjab, who is present in Court, accepts notice on behalf of the State.

On 5.6.2018, the case was fixed for recording evidence of

the prosecution witness. On that day, one PW namely Nirmal Singh was present but the same was deferred on the request of the learned defence counsel on the ground that an application for summoning the call details of the telephone numbers of the police officials, as such, learned Judge has passed the following order on 5.6.2018 :-

“Examination in chief of PW ASI Nirmal Singh is recorded but his cross examination deferred at the request of the learned defence counsel on the ground that he has filed an application for summoning the call details of the telephone numbers. He has also filed an application in this regard. Copy supplied. For filing reply to the application, the case is to come up on 13.07.2018. No other PW is present. Let remaining PWs be summoned for the date fixed.

However, on 13.7.2018, said application had been disposed of and the petitioner was not allowed to cross-examination. In fact, the cross-examination was ordered to be treated as Nil.

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

Every criminal trial is a process of discovery of truth. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the reality and to advance the cause of justice.

In **Ram Chander v. State of Haryana**, (1981) 3 SCC 191, while speaking about the role of a judge in a criminal trial, Hon’ble Supreme Court observed that if a criminal court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in

the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth.

Hon'ble Apex Court in **Maneka Sanjay Gandhi and another v. Rani Jethmalani**, (1979) 4 SCC 167, though in a different context, observed:-

“Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate when- the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.”

Hon'ble Supreme Court in **Zahira Habibullah H. Sheikh and another v. State of Gujarat and others**, 2004 (2) RCR (Criminal) 836 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.”

It is the duty of the trial Court firstly to decide the application filed on 5.6.2018 for summoning the call details of the telephone numbers mentioned therein but the said application was kept pending and the petitioner was denied opportunity of cross-examination.

Hon'ble Supreme Court in **Suresh Kumar v. Union of India**; 2015 (3) RCR (Criminal) 340 has observed that the accused can be allowed to summon call record of the mobile telephones of concerned police officers to show that the police were not near the location of recovery but were at some other location. It has been observed in para 8

as under : -

“8. All that we are concerned with is whether call details which the appellant is demanding can be denied to him on the ground that such details are likely to prejudice the case of the prosecution by exposing their activities in relation to similar other cases and individuals. It is not however in dispute that the call details are being summoned only for purposes of determining the exact location of the officers concerned at the time of the alleged arrest of the appellant from Yashica Palace hotel near the bus stand. Ms. Makhijamadea candid concession that any other information contained in the call details will be of no use to the appellant and that the appellant would not insist upon disclosure of such information. That in our opinion simplifies the matter in as much as while the call details demanded by the appellant can be summoned in terms of Section 65B of the Indian Evidence Act such details being relevant only to the extent of determining the location of officers concerned need not contain other information concerning such calls received or made from the telephone numbers concerned. In other words if the mobile telephone numbers caller details of the callers are blacked out of the information summoned from the companies concerned it will protect the respondent against any possible prejudice in terms of exposure of sources of information available to the Bureau. Interest of justice would in our opinion be sufficiently served if we direct the Trial Court to summon from the Companies concerned call details of Sim telephone No.9039520407 and 7415593902 of Tata Docomo company and in regard to Sim No.9165077714 of Airtel company for the period 24.02.2013 between 4.30 to 8.30 p.m. We further direct that calling numbers and the numbers called from the said mobile phone

shall be blacked out by the companies while furnishing such details.”

In this view of the matter, this court is of the opinion that the learned trial Court should firstly decide the application filed on 5.6.2018.

Consequently, the present petition is allowed and impugned order dated 13.7.2018 is set aside with a direction to learned trial Court to firstly decide the application of the accused filed on 5.6.2018 and thereafter, afford him an opportunity to cross-examine PW ASI Nirmal Singh.

August 2, 2018
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>