

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

**Criminal Misc.No.M-34613 of 2017(O&M)
Date of Decision : 06.02.2018**

Sunil Kumar

..... Petitioner

Versus

Bharat

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Johan Kumar, Advocate
for the petitioner.

RAJ SHEKHAR ATTRI, J. (Oral)

Petitioner has preferred the instant petition under Section 482 Cr.P.C. for setting aside the orders dated 05.08.2017 and 05.09.2017, passed by the learned Judicial Magistrate Ist Class, Faridabad whereby evidence of the petitioner has been closed and the application filed by him to examine himself as defence witness and some other witnesses has been wrongly and illegally declined in Criminal Complaint No.RBT-704 dated 30.10.2014, titled as Bharat vs. Sunil Kumar, pending before that Court.

Although, the petitioner is in the habit of delaying the proceedings yet a fair trial is the heart of the criminal jurisprudence. Equally, this is an important facet of a democratic polity which is governed by Rule of Law. It is well settled that denial of fair trial is crucifixion of human rights. 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 vs. State of Gujarat (SC)** 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.”

The application has been declined solely on the ground that the petitioner did not produce any evidence on five dates consecutively and at later stage he moved an application under Section 315 Cr.P.C.

However, to the mind of this Court, this is no ground to decline the said application.

It has been brought to the notice of this Court that the petitioner filed an application for producing the defence witness and this application was accepted by learned trial Court and petitioner was asked to deposit Rs.1170/- as diet money vide order dated 01.06.2017 but the summons have not been issued to the witnesses.

In this view of the matter, impugned orders dated 05.08.2017 and 05.09.2017 are set aside. Learned trial Court is directed to summon those witnesses whose diet money has been deposited and also allow the petitioner to examine himself as a defence witness.

Accordingly, the instant petition stands allowed.

06.02.2018
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(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No