

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

Criminal Misc.No.M-4311 of 2017 (O&M)

Date of Decision : 21.03.2018

Anil Kumar

..... Petitioner

Versus

UT Administration, Chandigarh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Shubhjot Singh Chadha, Advocate
for the petitioner.

Mr. Sukant Gupta, APP, UT, Chandigarh.

RAJ SHEKHAR ATTRI, J. (Oral)

Petitioner has preferred the instant petition under Section 482 Cr.P.C. for setting aside the order dated 22.12.2016, passed by the learned Judicial Magistrate Ist Class, Chandigarh whereby the evidence of the petitioner has been closed by order in case FIR No.74 dated 16.04.2011, registered under Section 420 IPC and Section 24 of the Immigration Act at Police Station Sector 3, Chandigarh.

I have heard learned counsel for the parties 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 mock 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.

The defence evidence of the petitioner has been closed by order solely on the ground that despite giving numerous effective opportunities to the petitioner, he could not conclude his evidence in defence.

To the mind of this Court, the opportunity to lead the defence evidence is part of fair trial and also is essential for just decision of the case.

In this view of the matter, impugned order dated 22.12.2016 is set aside. Learned trial court is directed to give adequate opportunities to the petitioner to lead evidence in defence.

Accordingly, the instant petition stands allowed.

(RAJ SHEKHAR ATTRI)
JUDGE

21.03.2018
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Whether speaking/reasoned Yes/No

Whether Reportable : Yes/No