

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

**Criminal Misc.No.M-5226 of 2016 (O&M)
Date of Decision : 22.02.2018**

Ashwani Kumar

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

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

Ms. Simranjeet Kaur, AAG, Punjab.

Mr. J.S.Thind, Advocate
for respondent No.2.

RAJ SHEKHAR ATTRI, J. (Oral)

Petitioner has preferred the instant petition under Section 482 Cr.P.C. for quashing of the order dated 02.05.2015, passed by the learned Chief Judicial Magistrate, Amritsar, vide which application under Section 311 Cr.P.C. filed by the State for summoning Dharambir Singh, Satish Kumar and Gurdeep Singh as prosecution witnesses has been allowed.

It has been argued by the learned counsel for the petitioners that earlier similar application (Annexure P-3) was dismissed vide order dated 02.03.2012 (Annexure P-4), passed by the learned Chief Judicial Magistrate, Amritsar and thereafter same application (Annexure P-5) was filed which was allowed.

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.

Learned trial Court has observed that evidence of aforesaid witnesses are highly essential. Their statements were recorded during investigation but inadvertently their names were not mentioned in the list of witnesses (Annexure P-2), attached with the police report.

To the mind of this Court, the evidence of said witnesses is essential for just decision of the case and also in the interest of justice. So far as, dismissal of earlier application is concerned, to the mind of this Court, neither learned Chief Judicial Magistrate nor Asstt. Public Prosecutor took the matter in a sincere manner. The earlier application under Section 311 Cr.P.C. (Annexure P-3) was submitted on 01.12.2011 for summoning Dharamvir, Satish Kumar and Gurdip Singh as prosecution witnesses on the ground that their evidence is material but the names have been left in the list of prosecution witnesses. The said application was

dismissed with the following order:-

“Reply to application under section 311 Cr.P.C. not filed. Heard. APP for the State has fairly conceded that application under Section 311 Cr.P.C. moved by him is without any basis because neither statement of witness sought to be summoned under Section 161 Cr.P.C. are on the file nor the necessity of their testimony is explained or argued in this case. Hence application under consideration is hereby dismissed.

One PW is examined. No other PW is present nor served. Remaining PWs be summoned for 23.05.2012.”

A bare perusal of the application (Annexure P-3) and order (Annexure P-4) transpires that Asstt. Public Prosecutor has wrongly stated that the application is without any basis. Even learned Chief Judicial Magistrate failed to appreciate the statements of these witnesses. Thus, if the said application was dismissed in the abovesaid manner vide order dated 02.03.2012, it will not affect the absence of fresh order dated 02.05.2015.

Keeping in view the facts and circumstances of the case, this Court is of the considered opinion that the impugned order does not suffer from any illegality, infirmity or irregularity and the same does not call for any interference.

Therefore, the instant petition being devoid of any merit is dismissed.

22.02.2018
mamta-M

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No