

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

**Criminal Misc.No.M-8782 of 2016 (O&M)
Date of Decision : 23.03.2018**

Balwinder Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

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

Mr. Karanbir Singh, AAG, Punjab.

Mr. Jai Bhagwan, Advocate
for respondent No.2.

RAJ SHEKHAR ATTRI, J. (Oral)

Petitioner has preferred the instant petition under Section 482 Cr.P.C. for setting aside the order dated 09.12.2015, passed by the Judicial Magistrate Ist Class, Malerkotla wherein the application filed by respondent for leading additional evidence in the form of experts report for comparison of writing on body of cheque with specimen writing of the respondent has been 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 is highly essential.

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.

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.

23.03.2018
mamta-M

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No