

Crl. Revision No. 2820 of 2018

Date of Decision: October 16, 2018

Shiv Kumar

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present:- Mr. R.S. Bains, Advocate
for the petitioner

Mr. D.R. Singla, DAG Haryana

Sudhir Mittal, J. (Oral)

The petitioner is being tried in FIR No. 199 dated 25.08.2017 registered at Police Station Kalayat under Sections 188, 436, 450, 124-A, 427, 120-B, 34 IPC and Sections 3 and 4 of Prevention of Damage to Public Property Act, 1984.

On conclusion of the prosecution evidence, statement of the petitioner-accused under Section 313 Cr.P.C. was recorded on 03.04.2018. Thereafter, he moved an application dated 11.05.2018 styled as one under Section 311 Cr.P.C. for recalling PW-16 Kuldeep son of Mangal Singh for further cross-examination as well as for leading defence evidence. Vide the impugned order dated 30.05.2018, the said application has been dismissed.

Learned counsel for the petitioner submits that so far as further cross-examination of PW-16 Kuldeep son of Mangal Singh is concerned he does not challenge the order in that regard. His only submission is that by virtue of Section 233 Cr.P.C. an accused is entitled to lead his evidence. This right of an accused person can not be denied to him. The reasons mentioned by learned trial Court

while passing the impugned order are not germane to the issue and, thus, the impugned order is liable to be set aside.

Learned State counsel submits that it is not the case of the petitioner that on the date of the incident he was at some other location. It is also not his case that the mobile numbers in respect of which the petitioner wants to prove the call record details are owned by him. Thus, the learned trial Court was justified in passing the impugned order.

A perusal of the impugned order shows that application dated 11.05.2018 was filed with two fold prayer -

(a) for further cross-examination of PW-16 and

(b) for summoning the President NCHRO, New Delhi as well as Nodal Officer Bharati Airtel Limited, Mohali and Nodal Officer Jio Reliance Adarsh Nagar, Kaithal.

Regarding further cross-examination of PW-16, learned counsel for the petitioner is not aggrieved of the order passed in respect thereof. So far as the other witnesses sought to be summoned are concerned, it is the right of an accused to lead evidence in his defence. The same can not be denied on the ground that during cross-examination of the prosecution witnesses it was not put to them that he was not present at the spot in dispute on the date of the incident or that the mobile phones, of which call detail record is sought, were used by him. The trial has to be completed in accordance with the provisions of the natural justice and the rights of an accused cannot be foreclosed in an arbitrary manner.

Thus, the impugned order dated 30.05.2018 so far as it pertains to denial of request of the petitioner to summon the witnesses, in his defence, is quashed. The petitioner is directed to conclude his evidence by availing

two opportunities. The trial Court is directed to provide the necessary assistance for summoning of the witnesses. It is made clear that more than two opportunities shall not be granted. The parties shall appear before the trial Court for further proceedings on 23.10.2018 at 10.00 a.m.

Disposed of.

October 16, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No