

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

117

CRR No.458 of 2018

Date of Decision: February 5th, 2018

Bunty

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.S. Mamli, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners has approached this Court assailing the order dated 24.01.2018 passed by the Additional Sessions Judge-1, Fatehabad, whereby an application under Section 311 Cr.P.C. moved by the prosecution for summoning concerned Nodal Officer on the ground that during the investigation, although the investigating agency had collected the call details of the mobile phones of accused Ravinder @ Poly, Vinod @ Dholia and Manish Kumar @ Baniya but did not cite any Nodal Officer as a witness from the respective companies to prove the call details, location and identity which are essential for the purpose of proving the case of the prosecution and would further fall within the provisions of Section 311 Cr.P.C. as the evidence would be essential for just decision of the case, has been dismissed.

It is the contention of learned counsel for the petitioner that the investigating agency having collected data with regard to the call details of the accused having failed to cite any Nodal Officer as a witness would lead to a situation where the said collected evidence would not be of any help to the Court for coming to a just decision. He contends that the call details of the mobile would prove the presence of the accused at the site and their

identity as to whether the said phones belong to them or not. He, therefore, prays that the dismissal of the application is not justified and is not in accordance with law and, therefore, the impugned order be set aside and the application of the prosecution be allowed.

I have considered the submissions made by learned counsel for the petitioner and have also gone through the impugned order.

A perusal of the order would indicate that the case is primarily based upon the evidence of the eyewitnesses. There being direct eyewitness and complainant himself being an eyewitness to the incident, the Court has rightly proceeded to come to a conclusion that the call details would not be of much relevance. Thereafter the Court has also looked into the aspect that initially the challan was presented and thereafter supplementary challans were also produced. An application under Section 319 Cr.P.C. was also allowed where additional accused were summoned and again proceedings were going on when further supplementary challan was presented against all the accused and then charge framed on 30.11.2015. From the said date till 29.11.2017, the prosecution evidence was going on when application under Section 311 Cr.P.C. has been moved. On the said application, two witnesses namely Bhavnesh Kumar PW-29 and PW Mohan Lal, Ahlmad, were recalled. They were examined by the prosecution on 05.12.2017 when the prosecution evidence was closed. After the framing of the charge against all the accused which included the accused who have been subsequently summoned as additional accused and after presentation of the supplementary challan, two years have passed by when the prosecution had moved various applications including one under Section 311 Cr.P.C. On 29.11.2017 which was allowed. Now, the present application has again

been moved by the prosecution for a purpose which stood already achieved on examination of ASI Ashok Kumar, Incharge Cyber Cell, Fatehabad, as PW-12 who has proved the call details report as Exhibit P28, where the call details of each of the mobile phones have been given. The present application, therefore, appears to be an afterthought and in any case, the call details being already proved on record through a report by a competent witness, the present application has rightly been dismissed as this evidence would not be essential for the just decision of the case. The order as has been passed by learned trial Court cannot be said to be in any manner illegal which would call for any interference by this Court.

The present petition being devoid of merit is, therefore, dismissed.

February 5th, 2018
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No