

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4814-2019 (O&M)
Date of Decision : 23.07.2019

Adarshman Sharma

Versus

..... Petitioner

Renu Sharma and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Saqib Ali Khan, Advocate
for the petitioner.

Mr. R.K.Gautam, Advocate
for the respondents.

RAJ SHEKHAR ATTRI, J. (Oral)

The petitioner has preferred the instant petition under Section 482 Cr.P.C. for quashing of order dated 15.11.2018, passed by the learned Judicial Magistrate Ist Class, Chandigarh, vide which the evidence of petitioner has been closed by order on the ground that the adequate opportunities have been given to the petitioner, but he failed to lead any evidence.

I have heard learned counsel for the parties and have gone through the record.

On perusal of the impugned order, it transpires that earlier, 10 opportunities were given to the petitioner. Even one last opportunity was also granted but he could not produce any evidence.

The concept of fair trial is in integral part of our criminal

jurisprudence system.

Our criminal jurisprudence is based upon the doctrine of Audi alteram partem that mean nobody shall be condemned unheard.

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 to be a mook spectator. A criminal trial is a search of truth. Therefore, a Judge has to intervene as and when required, especially to rule out the illegalities, irregularities or infirmities in conducting trial and also the inadmissible evidence.

Keeping in view the facts and circumstances of the case, this court is of the view that the petitioner has statutory rights to lead evidence and this right cannot be curtailed. In the interest of justice, he be given two adequate opportunities to lead his evidence in defence. However, he is burdened with costs of Rs.20,000/- which shall be paid to respondent No.1 Renu Sharma by way of bank draft in her name before the court below.

Consequently, the instant petition stands accepted and the impugned order dated 15.11.2018 is set aside. The trial court is directed to

provide two effective opportunities to the petitioner to lead his evidence in defence, subject to payment of said costs and submitting of the list of witnesses within a period of 20 days from today.

23.07.2019
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No