

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-27982-83-2019 IN/AND
IOIN-CRM-M-41639-2014 (O&M)

Reserved on : 23.09.2019
Date of decision : 06.12.2019

Salwinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. H.S. Randhawa, Advocate,
for Mr. P.S. Ahluwalia, Advocate,
for the petitioner.

Ms. Anju Arora, Addl.A.G., Punjab,
assisted by SI Lakhbir Singh and HC Daljit Singh.

Mr. P.S. Hundal, Sr. Advocate,
with Mr. Premjit Singh Hundal, Advocate,
for applicant/respondent No.6.

None for respondent Nos.5, 8, 10 and 11.

None for respondent No.9.

JITENDRA CHAUHAN, J.

As Pithily stated in *Jennison vs. Baker 1972 (11 ALL ER 997)*,
the law should not be seen to sit by limply, while those who defy it go free
and those who seek its protection lose hope, the Courts have to ensure that
accused persons are punished and that the might or authority of the State are
not used to shield themselves or their man. It should be ensured that they do

to wield such powers which under the Constitution has to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, the Courts have to deal with the same with an iron hand, within the framework of law. It is as much the duty of the prosecution as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice' and to prevent the aspect that the faith and trust of a common citizen is not eroded.

Now, adverting to the case in hand, the main petition (already decided) was filed under Section 482 Cr.P.C. for issuance of directions to the official respondents to protect the life and liberty of the petitioner and his family member; to take stern and strict action against respondent Nos.4 to 11; and to transfer the investigation in FIR No.151 dated 12.10.2014, registered under Sections 302, 148 and 120-B of the Indian Penal Code (for short, 'the IPC') read with Section 149 IPC, at Police Station Sarhali, District Tarn Taran, to an independent agency outside the District Tarn Taran.

The case of the petitioner is that his only son, namely, Gurjant Singh, aged 22 years, was brutally murdered at the hands of the private respondents, one of whom, happens to be a police officer and posted as Station House Officer in the same area, while the others are the henchmen of the a local MLA of ruling party, namely, Mr. Harminder Singh Gill. It was averred in the petition that the life and liberty of the petitioner and his family members was being threatened by the private respondents who are accused of murdering the son of the petitioner. Despite a number of

representations having been moved, the said persons were roaming freely in the area and were threatening the petitioner and his family members with dire consequences, while enjoying patronage of the local MLA.

The petition was disposed of by this Court on 22.09.2016, in the following terms:-

“Keeping in view the prayer made in the petition, without advertng to the merits of the case, at this stage, the present petition is disposed of with a direction to the official respondents that the inquiry in the matter be carried out by some Gazetted Officer under the supervision of Mr. G. Nageshwara Rao, Inspector General of Crime, Punjab, within a period of 45 days from the date of receipt of a certified copy of this order.

Meanwhile, during the subsistence of the inquiry, proceedings before the trial Court shall remain stayed.”

From the perusal of order dated 22.09.2016, it is amply clear that this Court had reposed faith in a senior IPS officer with the belief that the grievance of the aged father who had lost his only son in his prime of youth, would be addressed and the investigation would be brought to its logical end without being influenced by any external bias or pressure.

Despite the specific direction to complete the investigation within 45 days, when nothing came out, the petitioner again approached this Court by filing CRM No.30012 of 2017 seeking modification/recalling of order dated 22.09.2016, passed by this Hon'ble Court in the aforesaid impugned petition on the ground of wilful non-compliance of the aforesaid directions by the Investigating Agency. Consequently, this Court summoned the concerned officer i.e. Mr. G. Nageswara Rao, Inspector

General of Police (Crime), Punjab, to whom the investigation was entrusted by this Court. In compliance, the officer concerned caused appearance before this Court on 18.12.2017 and the following order was passed:-

"Mr. G. Nageswara Rao, IGP (Crime), Punjab, is present in person. He states that the inquiry in question has been conducted under his supervision and he is satisfied with the inquiry report. A translated copy of the report be placed on the record of this Court in a sealed cover.

From the perusal of Annexure A-8, newspaper cutting dated 10.04.2017, it is apparent that the proclaimed offenders have been roaming free and order dated 19.01.2015, whereby respondent Nos.4, 5, 7, 10 and 11 were declared proclaimed offenders, remained unexecuted.

Mr. Rao informs that the photographs on record pertain to the period prior to the passing of the order dated 19.01.2015, whereby, respondent Nos.4, 5, 7, 10 and 11 were declared proclaimed offenders. He also states that the petitioner was never heard by him.

The petitioner is directed to place on record the necessary document/ evidence to show that the photographs (Annexure A-5 to A-8) of respondent Nos.4, 7, 10 and 11 are post-order dated 19.01.2015.

Post again on 22.01.2018."

It was informed that the statement so made by the said officer was false. Resultantly, vide order dated 08.02.2018, the State was directed to verify the documents placed on record by the petitioner negating the statement so made by the officer before this Court, which reads thus:-

"Vide order dated 18.12.2017, learned Inspector

General of Police (Crime), Mr. G.Nageswara Rao had made a categoric statement before this Court that photographs brought on record by the petitioner is prior to the declaration of respondent Nos.4, 5, 7, 10 and 11 as proclaimed offenders.

Learned counsel for the petitioner states that statement made by learned Inspector General of Police is against the record. He cites Annexure AIII dated 10.04.2017, Newspaper-Punjabi Jagran having wide circulation in the area wherein one of the accused, namely, Balbir Singh is seen with the local MLA. However, Inspector Jagdev Singh (Crime) who is present in Court is unable to identify the named person.

Apart from this document, there are snapshots (Annexure AI 12) post declaration of the order dated 19.01.2015 and the date is stated to be 18.10.2017 where the MLAs, proclaimed offenders along with other police officers are seen in the picture. A copy of the video/ CD is handed over to learned State counsel.

In the circumstances, State is directed to depute some official who is well conversant with the facts of the case and who identifies the accused. Further, State is directed to inquire into the matter and collect the necessary information and file short affidavit a week prior to the adjourned date.

Post again on 22.02.2018.”

Subsequently, learned State Counsel tried to backtrack from the stand taken by Mr. Rao before this Court which is apparent from a perusal of order dated 22.02.2018, passed by this Court. The order reads as under:-

“On 18.12.2017 Mr. G. Nageswara Rao, Inspector General of Police (Crime), Punjab made a categorical

statement before this Court that the photographs brought on record by the petitioner are post order dated 19.01.2015 whereby the respondents were declared proclaimed offenders. Now, it has been submitted by the learned State counsel that such a statement was never made. It has also come on record that the petitioner was never heard in person by Sh. G. Nageswara Rao. The newspaper dated 10.04.2014 is suggestive of the fact that the photographs are post order dated 19.01.2015. As the petitioner was not heard in person by Mr. G. Nageswara Rao, therefore, the Court feels that the very purpose of inquiry is not achieved.

Post for further consideration on 16.03.2018.”

Thereafter, this Court called for a specific affidavit, wherein the State had to admit to the false statement having been made by the IPS officer which further exposed the shielding of the accused by the investigating agency. Thus, this Court passed the following order on 27.03.2018:-

“This Court, vide order dated 22.09.2016, directed the investigating officer to complete the inquiry within forty five days. However, the status report dated 30.11.2017, was filed before this Court on 11.12.2017, after a period of more than fourteen months.

The status report, so filed, does not advert to the question of five accused-respondents roaming freely, despite having been declared to be proclaimed offenders by the Court of competent jurisdiction. Two accused, who were arrested and against whom the final report has also been presented, were also declared to be

innocent. The report also maliciously assails the character of the deceased to the extent that certain unknown persons who may be inimical towards him, may have committed his murder. Thus, the status report largely sought to absolve all the accused persons in the present case without even, inter alia, joining the five accused/ respondents in the investigation.

The status report is primarily based upon the polygraph test conducted upon two challaned accused at the CFSL, CBI, New Delhi, despite the fact that the proceedings before the trial Court had already been stayed by this Court vide order dated 22.09.2016. In the said circumstances, it was not permissible for the investigating agency to approach learned Magistrate and obtain the necessary permission to conduct the polygraph test upon two challaned accused.

*Otherwise also, the result of polygraph test is not a substitute of a piece of evidence as observed by **Hon'ble the Supreme Court in Smt. Selvi and others Vs. State of Karnataka and others, 2010(2) RCR (Criminal) 867.***

Mr. G. Nageshwara Rao, IGP (Crime), Punjab, vide order dated 22.09.2016, was appointed to carry out investigation in the matter. As per affidavit dated 30.11.2017/07.12.2017, furnished by Assistant Inspector General of Police, Crime Zone, Amritsar, though, the investigation was conducted under the supervision of Mr. Rao, however, when he caused appearance before this Court, he specifically admitted that neither the petitioner was heard by him in person, nor was he ever joined in the investigation at any crucial stage. Mr. Rao further made a statement with regard to respondent Nos.4, 5, 7, 10 and 11, who had been declared proclaimed offenders by the Court of competent

jurisdiction that the photographs appended by the petitioner were prior to passing of order dated 19.01.2015, whereby the respondents were declared proclaimed offenders. The petitioner has also circulated Annexures P-8 and P-9, copy of the Newspaper, Punjabi Jaqran, wherein, one of the proclaimed offenders is seen in the picture carried in the newspaper. The concerned SHO/ DSP has filed an affidavit stating that the person seen in the photograph is Balbir Singh, who was a proclaimed offender and the photograph is post-order dated 19.01.2015.

Furthermore, in the interregnum period, the employee of the petitioner, namely, Sarwan Singh, has been won over and his whereabouts are not known. The petitioner also alleges that his daughter-in-law Simranjeet Kaur, who had earlier supported the case of the prosecution has also now been won over by the respondents.

*In view of the above and considering the facts that the petitioner was never joined in the investigation and the statement made before this Court regarding status of respondent Nos.4, 5, 7, 10 and 11 being against the record, the status report deserves to be ignored. In the case of **Zorawar Singh and another Vs. Gurbax Singh and others, 2015(1) RCR (Criminal) 259**, Hon'ble the Supreme Court, faced with the similar situation wherein investigating agency, inter alia, constituted SIT in contravention of the orders of the competent authority and had conducted the investigation at variance with the directions of the Hon'ble Court without taking prior permission, noticed that the High Court was completely justified in leaving out the report of the SIT from its consideration and directing the State Government to act in terms of the earlier report only. Similar view has been*

*taken by Hon'ble the Supreme Court in **Vinay Tyagi Vs. Irshad Ali @ Deepak and others, 2013(2) RCR (Criminal) 197.***

Accordingly, status report dated 30.11.2017 filed before this Court on 11.12.2017 is declared non est in law and the trial Court is directed to discard the status report and exclude it from the records of the present case. The trial Court shall proceed with the trial on the basis of the final report presented by the investigating agency.

Considering the fact that the FIR was registered on 12.10.2014 and two accused are in custody, the trial Court shall make an endeavour to conclude the trial expeditiously.

As the status report is not being considered, therefore, the reply thereof filed in the Court on behalf of respondent Nos. 6 and 8, is also of no consequence.

However, it is made clear that observations recorded by this Court pertain to the questions raised in the present petition and shall not, in any manner, be construed as an expression on the merits of the case.

Application stands disposed of.”

Within days from the passing of aforesaid order dated 27.03.2018, a criminal case was registered against the petitioner and others on 06.04.2018 i.e. FIR No.36, U/s 307, 341, 148, 149 of IPC and 25/27 Arms Act at P.S. Sarhali, District Tarn Taran. Feeling aggrieved, the petitioner approached this Court by way of CRM-M-19771-2018 alleging that the aforesaid FIR was an outcome of *mala fide* and a pressure tactic.

"Notice of motion.

On asking of the Court, Mr. Hittan Nehra, Addl. A. G., Punjab, who is present in the Court, accepts notice on behalf of respondents No.1 to 4.

Adjourned to 13.07.2018.

Meanwhile, learned State counsel is directed to file status report. The concerned police authority is directed not to adopt any coercive method.

Learned counsel for the petitioners is directed to supply five copies of the petition to learned counsel for respondents No.1 to 4 during course of the day."

Further, the private respondents who had been proclaimed offenders for last more than three years, allegedly launched an attack upon the petitioner and his family members. In this regard, FIR No.57 dated 21.05.2018 under Sections 452, 336, 427, 506, 148, 149 of IPC at P.S. Sarhali, District Tarn Taran, was lodged against the private respondents, who were though proclaimed offenders.

Again fearing threat to his life and liberty as well as of his family members, the petitioner invoked the inherent jurisdiction of this Court by filing CRM-M-23160-2018, wherein this Court passed the following order on 29.05.2018:-

"It is stated that a lot of pressure has been exerted on the petitioners and eye-witnesses in a murder case to effect compromise with the accused and five of the accused, namely, Balbir Singh, German Singh, Udey Singh, Chamkaur Singh and Sukhraj Singh are proclaimed offenders and one of the accused, namely, Gurcharan Singh is SHO of a police station in the same district. The next date fixed in the trial Court is

10.7.2018

Notice of motion for 16.7.2018.

In the meanwhile, Senior Superintendent of Police, Tam Taran would ensure that the safety of the petitioners is not endangered at the hands of the accused in the murder case including those, who have been declared as proclaimed offenders. The official respondents would submit a report on the next date of hearing that what action has been taken against the accused, who have proclaimed offenders statedly for the last 3 1/2 years.

Furthermore, the trial Court is directed to record the statements of eyewitnesses on the next date of hearing positively, which is fixed as 10.7.2018 and the case should not be adjourned just at the asking of any of the party/ their counsel and thereafter report be submitted to this Court with regard to recording of statements of the eye-witnesses in the Court.”

However, when the factum of winning over the witnesses came to the knowledge of this Court, this Court was constrained to *suo moto* invoke its powers under Section 482 of Cr.P.C. calling for a specific affidavit of DGP and the Home Secretary after framing specific issues and putting the State on notice of exemplary costs, with finally directing the trial Court not to pass the final order. Said exercise was undertaken by this Court only to ensure that further miscarriage of justice is not caused. On 31.07.2018, it was noticed as under:-

“Status report by way of affidavit of DSP, Sub Division, Patti, District Tarn Taran, dated 16.07.2018, filed in the Court is taken on record.

The affidavit filed clearly suggests that the

State is shielding the real culprits as despite repeated protests made by the petitioner, no protection was accorded to him. Even as per the stand of the State, proclaimed offenders, namely, Uday Singh, Jarmanjit Singh and Sukhraj Singh, attacked family members of the petitioner. On the complaint lodged by Paramjit Kaur, sister of Satnam Singh, an eyewitness of the murder case, FIR No.57 dated 21.05.2018, under Sections 452, 336, 427, 506, 148 read with 149 IPC has been registered at Police Station Sirhali, District Tarn Taran. This stand of the State reflects that the proclaimed offenders are located in the area who have not been arrested despite repeated orders passed, forcing this Court to record that the police has failed to play its effective role to guard the common man and has unfortunately sided with the accused, one of whom, namely, Gurcharan Singh, is currently an SHO of the Punjab Police. As per the instructions, the petitioner has resigned to his fate and on account of the State terror, is not coming forward to agitate his right. The State has sided with the accused so much so that the accused who were proclaimed offenders, were seen in general public with the sitting MLA, whereas, the State took the stand that those photographs were prior to the declaration of the accused as proclaimed offenders, which was found subsequently to be against the record.

The series of unfortunate events that have transpired in the present case have shocked the conscience of this Court. There has been an abysmal failure of the criminal justice system, wherein a mockery has been made of the entire system. In such circumstances, the Court cannot remain a mute spectator; and it would be a fit case for this Court to invoke its inherent powers under Section 482 of the

Cr.P.C. which empowers this Court to pass an appropriate order to prevent the abuse of the process of the law and to secure the ends of justice.

Before proceedings further with the matter, in the exceptional circumstances of the case, it is deemed fit by this Court to personally call upon the Home Secretary, State of Punjab as well as the Director General of Police, State of Punjab to file their specific affidavits with regard to the following:-

A. What steps have been taken to arrest the proclaimed offenders, namely- (i) Balbir Singh (ii) Jarmanjit Singh (iii) Uday Singh (iv) Chamkaur Singh and (v) Sukhraj Singh who have continued to be proclaimed offenders in a murder case for a period of more than 3.5 years by now?

B. Whether any action has been taken by the local police to book the family members and relatives of the said persons under Section 216 of the IPC, for harbouring the said proclaimed offenders and whether the local Police has examined the role of the local MLA, Shri Harminder Singh Gill, in giving shelter and protection to the said proclaimed offenders?

C. Whether any attempts have been made under Section 83 of the Cr.P.C. to attach the moveable and immovable properties of the said proclaimed offenders?

D. Whether any action has been taken against the local Police, who have failed to apprehend the abovementioned proclaimed offenders despite the fact that they have been roaming around openly and freely in the concerned area, as one of those can be seen surrounded by an entourage of Policemen in the company of a local MLA, and that against at least three of them, a subsequent FIR has also been registered on 21.05.2018?

E. Whether the failure of the local Police to apprehend the said proclaimed offenders for an inordinately long period of 3.5 years, despite repeated directions by this Court, would be a fit ground to examine the possibility of transferring the local SHO; the concerned DSP and the SSP, by replacing them with competent officers with impeccable integrity and credentials so that they can uphold the rule of law?

F. Whether a person who has been summoned by the Court under Section 319 of the Cr.P.C. to face trial in a murder case can be kept in service during the pendency of the trial, and whether it was appropriate to have the said person, namely, Gurcharan Singh to remain posted as a Station House Officer in the same District, wherein he is facing a trial as an accused in a murder case?

Necessary protection to the petitioner and his family members be also accorded as per law.

The State is also show-caused as to why exemplary costs be not imposed upon it in the matter.

In the circumstances, passing of the final judgment by the trial Court shall remain stayed till the next date of hearing.

Post again on 05.09.2018.”

On the adjourned date i.e. 05.09.2018, it was informed that despite the stay on passing of final judgment by the trial Court vide order dated 31.07.2018, the trial stood concluded on 04.08.2018, resulting into acquittal of the all the accused who had faced trial. It was asserted by learned State counsel that the factum of stay could not be communicated to the authorities as order dated 31.07.2018 was uploaded on the website on

the presence of learned State counsel as well as the investigating officer who was present to assist her. Thus, they were under obligation and duty bound to ensure the compliance of the orders/directions issued by the Court in letter and spirit. It is further noteworthy that learned trial Court proceeded with the case and on the same day, statement under Section 313 of all the accused was recorded, all the defence witnesses were given up and the judgment of acquittal was pronounced.

When the matter came up for hearing on 02.07.2019, the following order was passed by this Court:-

“Learned counsel for the petitioner states that the way the trial Court has conducted the trial casts shadow on the fairness of the trial. He further states that the charges were framed on 03.05.2018 and the matter was deferred to 24.05.2018. On that date, the accused could not be brought to the Court and the matter was deferred to 10.07.2018. On the said date, the learned Public Prosecutor examined seven witnesses and gave up eight witnesses. He further states that the statements recorded by the prosecution witnesses on 10.07.2018 were under duress as the daughters of the petitioner were threatened and therefore, they could not depose. At this stage, learned counsel for the petitioner states that the matter warrants retrial and the way the State has acted in the matter even as the Officer of the level of Inspector General of Police has not given the true picture as to how the incident had taken place.

Post for further consideration on 17.07.2019 as to why the order for retrial be not passed in the matter.

The trial Court record be requisitioned in the meantime.”

After passing of the above order, accused-respondent No.6, Stalinjit Singh, who had since been acquitted, has immediately caused appearance through a new counsel by moving CRM-27982-2019, praying not to order retrial in the matter. Learned Senior counsel appearing on behalf of respondent No.6 contends that the accused have been acquitted by the trial Court. The order of stay on passing of final judgment passed by this Court was not uploaded on the website and thus, not in the knowledge of learned trial Court. If aggrieved against the order of acquittal, the complainant-petitioner, if so advised, could file an appeal. No order for reinvestigation can be passed. The accused cannot be penalized twice for the same offence. He refers to the proviso to Section 372 Cr.P.C. whereby, the victim has the remedy to file appeal against the order passed by the trial Court acquitting the accused. Moreover, ordering of reinvestigation/*de novo* trial would seriously prejudice the case of the accused-respondents.

In view of the facts and the attending circumstances as showcased above, the moot point for determination is that whether in such a scenario, this Court is left powerless under law ?

Answer to the above question would be in the negative. However, before proceeding further, it is considered apposite to refer to the provisions of Section 397 (1) Cr.P.C, which read thus:-

“Section 397 (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior

Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation:- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.”

Hon'ble the Supreme Court, time and again, has cast a duty upon the High Courts to exercise their *suo motu* powers under Section 397 (1) Cr.P.C. and order re-trial. Reference in this regard can be placed on a decision of Hon'ble the Supreme Court in ***Municipal Corporation of Delhi vs. Girdharilal Sapuru and others 1981 AIR (SC) 1169***, wherein it has been specifically held that if an order of discharge passed by the trial Court is found to be illegal and the revision is found barred by limitation, the High Court must exercise its *suo motu* powers of revision, as enshrined under Section 397(1) Cr.P.C. Further reliance can be placed on the judgment of Hon'ble the Supreme Court in ***Zahira Habibulla H. Sheikh and another vs. State of Gujarat and others, 2004 (2) RCR (Criminal) 836***, wherein it has laid down the broad factors and guidelines which would warrant re-trial in a murder case. It would be imperative to add that each of the said factors/ guideline is met out in the present case in the following terms:-

1. Dishonest and faulty investigation:

As has been discussed in the preceding paragraphs that the investigation was carried out farcely, wherein, even an IPS officer to whom the investigation was entrusted by this Court

made a false statement. Further the factum of dishonest and faulty investigation is crystal clear from the fact that it was admitted by the State on affidavit that the private respondents who were declared proclaimed offenders were seen openly roaming.

2. Trial held in perfunctory manner-Large number of PWs turning hostile and resiled

It is discernible that even this Court had specifically directed the Senior Superintendent of Police of the District to provide adequate security to the petitioner and his family members to ensure a fair trial, still the private respondents were able to exert their influence and pressure upon the petitioner and his family members. Apparently, the concerned SSP turned blind eye towards the directions issued by this Court, evident from the registration of FIR No.57 (*ibid*) registered by the family members of the petitioner as a result of the assault at the hands of the private respondents who had been proclaimed offenders for years. The family members of the complainant also resiled from their statements allegedly on account of threat and external pressure.

3.Prosecuting Agency not acted in requisite manner-Public Prosecutor rather acted as defence counsel.

This fact is also crystal clear on account of unnecessary haste being shown by the concerned Public Prosecutor who while acting as defence counsel gave up all the official

witnesses on the same day.

4. Large number of PWs not examined for one reason or the other-Even injured witness not examined.

This fact can also be read in continuation of the above facts that the Public Prosecutor for the reasons best known to him gave up almost the entire official witnesses without any rhyme or reason. Further, it would be important to mention that the remedy of appeal only lays down the procedure of re-appreciation of evidence and once it is the petitioner's own case that he had to resile on account of threats/pressure exerted by the private respondents upon him, his family members, resulting in even registration of FIRs, the fate of such an appeal which is based upon hostile evidence is like a writing on the wall as the said course would devoid and beret this Court of all the surrounding circumstances.

The most sad part of the instant case is the aspect that though it was apparent before the learned trial Court that the Investigating Agency and the Public Prosecutor have clouded still the learned trial Judge choose to become a mute spectator and failed completely in his duty to ensure a fair trial to say the least. In this regard, it would be pertinent to mention that to overcome such a situation the learned trial Court has been vested with specific powers under Section 311 Cr.P.C. and Section 165 of Indian Evidence Act to secure and unearth the truth as to why the petitioner was resiling and the unnecessary haste was being shown by the concerned Public

Prosecutor who was rather acting as a defence counsel. However, before proceeding further, it would be apposite to refer to the relevant provisions of law. Section 311 Cr.P.C. reads thus:-

“311. Power to summon material witness, or examine person present.-- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

Section 165 of the Evidence Act provides as under:-

“165. Judge's power to put questions or order production.- The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections

121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 194; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore expected.”

Hon'ble the Supreme Court in Zahira's case (supra) (famously known as Best Bakery Case) has observed that '*The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary where the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency*'.

Similarly, a Division Bench of Hon'ble Delhi High Court in case titled as ***Court on its own motion vs. Dhanraj*** CrI. Rev. P. No.245 of 2017, decided on 29.03.2017, has categorically held that '*though justice is depicted to be blindfolded, as popularly said, it is a veil not to see who the*

party before it is while pronouncing judgment on the cause brought before it by enforcing law and administer justice and not to ignore or turn the mind/attention of the court away from the truth of the cause or lis before it, in disregard of its duty to prevent miscarriage of justice. When an ordinary citizen makes a grievance against the mighty administration, any indifference, inaction or lethargy shown in protecting his right guaranteed in law will tend to paralyse by such inaction or lethargic action of Courts and erode in stages the faith inbuilt in the judicial system ultimately destroying the very justice-delivery system of the country itself. Doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulative red herring.

In this case, the role of police including the SIT headed by Mr. Rao and the specific stand taken by Mr. G. Nageshwar Rao, IGP (Crime), Punjab before this Court on 18.12.2017 that the accused were not proclaimed offenders when they were seen in public view sharing dais with influential persons of the area including the local MLA, is a strong pointer that the accused being very well connected persons, have influenced the course of investigation leading to the acquittal of accused-respondent Nos.6, 8 and 9. The factum of staying the final judgment by the Court was also not conveyed by the State counsel to the trial Court. The non-communication of the order passed by the Court whereby, passing of final judgment was ordered to be stayed before the trial Court led to acquittal of the accused. The order dated 31.07.2018 was passed in the open Court and uploaded on the official website on 07.08.2018. The judgment of acquittal was passed on 04.08.2018. This fact also generates suspicion. The family members of

the victim were attacked and FIR in this connection was registered wherein no cognizance was taken. All these circumstances collectively convince the conscience of the Court that the police failed to perform its duties to protect the life and liberty of the victim's family which resulted in the acquittal of the accused. The Court feels that it is a fit case for reinvestigation. It is ordered accordingly. The reinvestigation be carried out by Kanwar Vijay Pratap, Inspector General of Police, Punjab. The SSP concerned is directed to hand over the entire record to Kanwar Vijay Pratap. The reinvestigation be completed and a report in this regard be furnished within five months from the date of receipt of a certified copy of this order.

Disposed of.

06.12.2019
atulsethi

(JITENDRA CHAUHAN)
JUDGE

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