

\$~56

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of decision: 09.01.2020*

+ CRL.M.C. 1850/2017

SUNIL SHARMA

..... Petitioner

Through: Mr.Kirti Uppal, Sr. Adv. with  
Mr.Shailendra Babbar, Mr.Ajay  
Kumar, Ms.Manisha Parmar &  
Ms.Siddhi Mittal, Advs.

versus

STATE

..... Respondent

Through: Mr.Rahul Mehra, Standing Counsel  
(Crl.) with Mr. Panna Lal Sharma,  
APP & Mr.Chaitanya Gosain, Adv.  
Addl. DCP Seweta Chauhan,  
Insp.Jarnail Singh, ACP Tilak R.  
Malhotra & Insp.Sailender Sangwan,  
SHO/Crime Branch.  
Mr. Madhu, NIC, CGO Complex

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**J U D G M E N T (O R A L)**

1. Vide the present petition the petitioner seeks directions thereby quashing of order dated 18.02.2017 passed by Special Judge NDPS-02, (Central), Tis Hazari Courts, Delhi in F.I.R. No. 82/2015 registered at P.S. Crime Branch whereby an application bearing M.A. No. 35 / 2016 under

section 91 Cr.P.C. was disposed off.

2. The case of the prosecution is that on 30<sup>th</sup> May 2015 at around 12:45 pm, the Police of P.S. Crime Branch, Prashant Vihar Office, Delhi had received secret information from its informer that one person namely Sunil Sharma, petitioner herein, who is dealing in the trade of medicines and is having a Shop on the Second Floor, Ram Gali, Bhagirath Palace, Delhi was going to come to his shop between 2:00 P.M. to 3:00 P.M. with a consignment of Ephedrine. The said Sunil Sharma is into the illegal trading business of Ephedrine. Consequently, on the instructions of the superior officers, a raiding party was constituted consisting of SI Sanjay Kumar, HC Rohtash, HC Shiv Charan, Ct. Ravinder and Ct. Jitender, of Spl. Team Crime. At 1:15 P.M, the raiding party had left from Crime Branch office, Prashant Vihar, Delhi on a vehicle with IO Bag, Field Testing Kit and weighing machine and had reached at the spot, as told by the secret informer, on 30.05.2015 at around 2:20 P.M. and had laid the trap. At around 2:35 P.M., a person wearing white shirt and brown pant carrying in his hand 'a black coloured polythene bag' came and tried to climb the stairs of the building. He was identified by the secret informer to be Sunil Sharma, the petitioner herein, and was carrying Ephedrine with him. At about 2:37

P.M., when the said person was about to enter his shop, he was apprehended by the police and the black polythene bag was taken in custody and upon interrogation the said person revealed his name to be Sunil Sharma, R/o C-3/57, Ashok Vihar-II, Delhi.

3. It is further the case of the prosecution that the material carried by Sunil Sharma in the black polythene bag was checked by the raiding party on the Field Testing Kit and after having found Ephedrine, weighing around 10.2 Kg, it was confiscated and thereafter the raiding party withdrew from the said material two samples of 250 gms. each. At around 6:40 P.M., the information of seizure of Ephedrine by the raiding party along with the copy of the seizure memo was sent to the S.H.O. / Crime Branch for the registration of the case and a request was made to depute another officer for investigation. At about 8.05 P.M the information was received at the Police Station Crime branch, Delhi and consequent to that an F.I.R bearing no. 82/2015, was registered by the police of Police Station Crime Branch, Delhi. SI Dinesh Kumar took over the investigation from SI Sanjay Kumar to conduct further investigation in this case. SI Dinesh Kumar after reaching the spot made inquiries from SI Sanjay Kumar and on his instance, prepared a 'Site Plan' on the spot and had recorded statement of HC Shiv Charan

after making inquiries from him. SI Dinesh Kumar, after reaching the spot, made inquiries from Sunil Sharma, (petitioner herein) at about 2:30 A.M. The petitioner was arrested and remained in detention of the police at Police Station Crime Branch at Bhagirath Palace, Chandni Chowk, Delhi from 2:37 p.m. of 30.05.2015 up till 2:30 a.m. of 31.05. 2015, the place where the business establishment of the petitioner was situated. It is also the case of the prosecution that the intimation of arrest was given to the son of the petitioner.

4. On 04.01.2016 challan of the case F.I.R No. 82/2015 was filed in the Court and consequent upon the receipt of summons, the petitioner appeared before the designated Court and accordingly on 22.02.2016, charges under Section 9A read with Section 25A of the N.D.P.S. Act were framed and the matter was adjourned for 18.04.2016 for prosecution evidence. Thereafter, two witnesses were examined, out of which cross examination of one of the witnesses of the prosecution was deferred after being partially cross examined, for the purpose of filling of appropriate application seeking directions from the Trial Court to the prosecution for placing on record the original electronic file of the F.I.R of this case bearing no. 82/2015, dated 30.05.2015.

5. It is further the case of the prosecution that during the course of the trial of the case FIR no. 82/2015, the prosecution on 18.04.2016 examined HC Jaipal Singh as PW-1 to prove the FIR and after recording of his examination in chief and part cross examination, he was specifically asked to produce the original electronic file of this case. Due to his inability to provide the same, a request was made to the Trial Court to defer the cross examination of the witness, HC Jaipal Singh, as the accused wanted to file a proper application under Section 91 Cr.P.C. for obtaining the original electronic record of the FIR. On 16.07.2016, the petitioner, in order to falsify the prosecution version and demolish the story of the prosecution, filed three applications under section 91 Cr.P.C., one of which was M.A. No. 35/2016 seeking directions from the Trial Court to the Prosecution/Investigating Agency for procuring and placing on record the original electronic file of the FIR of this case. Pursuant to the application of the petitioner, number of opportunities were granted to the investigation agency to place on record the original electronic record of the FIR. Again on 07.01.17, the Court issued notice to the investigating agency, so that the application bearing no.35/16 may be heard and disposed of.

6. The Trial Court, vide impugned order disposed of the application of

the petitioner as under:-

*"As regards application no. 36/16, it may be mentioned here that PW-1 HC Jaipal Singh had got registered FIR through computer operator. It was not recorded by PW1 himself. Even otherwise, it is submitted by Ld. Addl. PP that even the computer operator would not be able to provide properties of the file containing the FIR, as he merely recorded on the system provided to him.*

*Since PW1 HC Jaipal Singh himself did not record the FIR, rather he got it recorded through computer operator, he would not be able to provide particulars of the concerned FIR file, so registered online.*

*As regards computer operator, he too would not be able to provide for any such original electronic file, the reason being that he simply typed on the computer made available to him, while the data is fed online and goes to the server. In view of this, application filed by the accused seeking production of original electronic file pertaining to the FIR, is hereby Dismissed."*

7. It is pertinent to mention here that the respondent/State filed reply in CrI.MC 1851/2017 along with CDRs of the petitioner, his son and his employee and on the basis of the said reply, the application of the petitioner was dismissed. However, in reply, it was stated that the information for registration of FIR was fed into the computer system and thereafter the same was stored on the server and hence, the original electronic file containing the

FIR with its properties cannot be placed on record. The FIR was fed into the computer installed at PS Crime Branch on 30.05.2015 and the FIR was registered using CIPA system but now the CIPA system is not being used and instead, CCTNS project is in operation with effect from 01.07.2015 and due to this transition from CIPA to CCTNS, the original electronic file of the FIR in question, is no longer available.

8. The State further replied that the requirement in law is that the copy of F.I.R. is to be supported by a certificate under Section 65 (B) of the Indian Evidence Act, 1872. Further, recording of the information on the basis of rukka, the contents of rukka are fed into the same online and FIRs are thereafter registered, and as such, there is no requirement in law that original electronic file containing the F.I.R. is to be placed on record.

9. During hearing of the present case on 20.11.2019, Mr. Kirti Uppal, learned senior counsel for the petitioner submitted that the learned Trial Court has lost the sight of the fact that the liability and availability are two different aspects and it was never said that the data was not available. Moreover, it was not pleaded that the data has been destroyed. Accordingly, Ld. Counsel submitted that relevant data can prove the falsity of the case of the prosecution and goes to the root of the matter and the same cannot be

brushed aside in a casual manner especially when the concerned 'Record Keeper' of the data is not bringing records despite directions of the Court. As such, the impugned order suffers from conjunctures and surmises, hence the same is liable to be set aside.

10. Learned Senior counsel also contended that the learned Trial Court failed to appreciate the contention of the petitioner that allegations of the prosecution are that call details and tower location of mobile phones will prove the presence of the holders of mobile numbers at the places which will falsify the story of the prosecution and can only be proved by placing on record the data as prayed. It cannot be concluded that the same is not available without directing the service provider to place on record the statement on oath and permission to the accused to cross examine the person concerned to test the veracity of the said statement, as it is vital right of the accused and the same cannot be taken away in summary manner. Especially, when it clearly falsifies the contents of the stand of prosecution, this clinching evidence will help the Court to come to a logical conclusion. Further, the Trial Court failed to appreciate that prosecution has intentionally and deliberately not placed on record the affidavit and its statement on oath, however, the version of the Prosecution has been believed

in most casual manner and resultant of that, true facts cannot be brought on record. The Petitioner wanted prosecution to place the aforesaid documents on record and the endeavor of the petitioner is to bring primary evidence on record which is not only admissible, but also clinching to prove/dis-prove the case of the prosecution. As such, the impugned order suffers from material irregularity, hence the same is liable to be rejected.

11. Mr. Shailendra Babbar, learned counsel for the petitioner submitted that when a file is generated in the computer, the same is saved with its properties as to at what time and date the same is created, the date of modification and access of that file and to see on which date and at what time the F.I.R. in question was registered.

12. He further contends that the case of the prosecution is that the file was not available due to the transition period from shifting of electronic record from CIPA system to CCTNS. Then, it was incumbent upon the prosecution to record a DD entry to that effect as to how many such files were not available, but on this count, no such DD entry is available.

13. It is pertinent to mention here that in the certificate issued under section 65-B of Indian Evidence Act, filed along with challan dated 22.12.2015, stated as under:

*“It is certified that document bearing FIR No. 82/15 is a computer print out. The same has been obtained on- the basis of information fed into the computer installed at P.S. Crime Branch on 30.05.15 while the same was being used in routine manner for the purpose of feeding in the similar category, of information and while-the said computer was under my lawful control. It is further certified, that the nothing adverse happened during this period so as, to cause any error regarding the information so fed in the computer.”*

14. Accordingly, the question arose in the mind of this Court, if the certificate based upon the F.I.R. mentioned above is issued, which is on the judicial file, then why the F.I.R. is neither in the hard disk nor on CCTNS server.

15. Moreover, as per the reply filed by the respondent, the F.I.R. was registered in May, 2015 and was shifted from CIPA to CCTNS project in July, 2015, thus the case of the prosecution is that during the period from May, 2015 to July, 2015, the electronic file was not available. Then, how in December, 2015 certificate under Section 65 B of Evidence Act was filed along with the charge sheet thereby conveying that the said system is still under control of person who has issued the said certificate.

16. In view of the controversy, vide order dated 20.11.2019, this Court directed In-charge of the Computer Systems and CCTNS project to appear

personally in the Court.

17. Accordingly on 06.12.2019, Baldev Raj Malhotra, ACP and Incharge of the Computer System and CCTNS Project appeared and submitted that the softcopy of the FIR is in the CIPA system and is available on the hard disk at Police Station Crime Branch. Therefore, it is wrong to suggest, that the original file of the FIR is not available during transmission from CIPA to CCTNS.

18. Whereas as per the submissions in the reply as recorded in the aforesaid order, the FIR was fed into the computer installed at Police Station Crime Branch on 30.05.2015 and the FIR was registered using CIPA system, but now the CIPA system is not being used and instead CCTNS project is in operation with effect from 01.07.2015. Thus, due to this migration from CIPA to CCTNS, the '*Original Electronic File*' of the FIR in question is no longer available.

19. Mr.Malhotra further submitted that to take out the original electronic file of the FIR from CIPA hardware, the assistance of NIC is required to be taken. He further also submitted that '*Original Electronic File*' of the FIR has been migrated from CIPA to CCTNS and the original electronic file is available on the public domain which can be accessed on the website of

Delhi Police.

20. Mr.Sumit Ganguly representing Tech Mahindra, who is the System Integrator CCTNS, submitted that it is not necessary that each and every property of the file will be transmitted from CIPA to CCTNS. However, the original electronic file of the FIR shall remain in the hard disk of the CIPA at Police Station Crime Branch. The '*Original Electronic File*' can only be retrieved from the CIPA with the help of NIC. Accordingly, vide order 06.12.2019, Ms.Shweta Chauhan and Mr.Jarnail Singh, SHO of Crime Branch were directed to take the help of NIC and get the original electronic file of the FIR in question to be retrieved in the presence of Mr. Aamir Syed, Advocate, who was present in the court and having good knowledge in electronic system.

21. It was further directed for retrieving electronic file of the FIR, ACP or the SHO named above shall intimate to the advocate mentioned above the date and time for the same and accordingly, the original electronic file shall be retrieved from the system in his presence and thereafter shall be placed before this Court.

22. The NIC was also directed to provide the information/*Original Electronic File* of the FIR as required in the present case.

23. During hearing on 07.01.2020, pursuant to order dated 06.12.2019, Additional ACP Shweta Chauhan (Security), Inspector Jarnail Singh, SHO, Jama Masjid and SI Ram Niwas, SOS-I, Crime Branch were appeared in Court. They were directed to take help of the NIC and retrieve the original electronic file of the FIR in question in the presence of Mr. Aamir Syed, Advocate.

24. Pursuant to the said order, Mr. Aamir Syed, Advocate reached the Police Station – Crime Branch, Pushp Vihar and he found that in the CIPA system, the audit trail of the user activity is not available.

25. Since the issue raised in the present petition is not properly replied by the investigating authority, therefore, this Court directed Ms. Shweta Chauhan, ACP to bring CIPA system, which is situated in Crime Branch Police Station, Pushp Vihar, in the Court. Also directed Mr. Madhu and Mr. Sunil of NIC shall remain personally present in Court.

26. Accordingly, the CIPA system has been has produced today in the court and operated with the help of Mr. Madhu from NIC and in the presence of above named advocate. He states that the FIR in the electronic system is available, however, the audit trial for the said date is not available. At this stage, this Court put a specific query to the advocate whether the

audit trail is there in the other FIRs pertaining to the same period, however, his reply was in negative and submits that they have not fed such system in the CIPA.

27. Mr.Rahul Mehra, Standing Counsel (Crl.) appearing on behalf of State has brought the original *Roznamcha* of police station crime branch whereby it is established that entry no. 15 was recorded on 30.05.2015, wherein, it is stated at about 12:45, the informer came and informed the police that Mr. Sunil Sharma (petitioner herein) who has a medicine shop in Bhagirath Palace and involved in illegal trade of Ephedrine, would come on 30.05.2015 between 02:00 P.M. to 03:00 PM. Thereafter, entry no. 16 dated 30.05.2016 was recorded that at 01:30 pm, HC Rohtash, HC Shiv Charan, Ct. Ravinder and IO with Field Testing Kit and electronic weighing machine reached at the spot as informed by the informer. Thereafter, as per entry 23, information regarding FIR No. 82/2015 for the offences punishable under Section 9a & 25a NDPS Act was registered at PS Crime branch.

28. Case of the petitioner is that the electronic file of the FIR is not available in their system with audit trail which would establish at what time the FIR was registered in the electronic system and submits that now it is clear from the CIPA system that the audit trial is not available not only in

this FIR but also other FIRs of same year.

29. Mr. Rahul Mehra, Standing Counsel (Crl.) has clarified that after July 2015 the audit trial of the FIRs are available on CCTNS but not before that on instructions from Mr. Baldev Raj Malhotra, ACP, CCTNS.

30. In view of the above facts recorded and this court has satisfied its conscious by hearing counsel for the petitioner and the counsel for the respondent and after bringing the CIPA system in court, I am of the view, there is no illegality and perversity in the impugned order passed by the Trial Court.

31. Needless to state that if there is any defect in their system and remedy for the same is available under the law, the petitioner may take benefit of the same, before the Trial Court.

32. Further, needless to state that if the petitioner still feels any document needs to be summoned, accordingly, he is at liberty to take steps as per law.

33. *Dasti.*

**(SURESH KUMAR KAIT)**  
**JUDGE**

**JANUARY 09, 2020/ms**