

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

CRR-53-2020 (O&M)
Reserved on:- 14.03.2023
Pronounced on:- 29.03.2023

Daksh Aadia

....Petitioner

Vs.

State of Punjab

...Respondent

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Sunil Chadha, Senior Advocate
with Mr. Tara Dutt, Advocate and
Mr. Saurav Kanojia, Advocate
for the petitioner.

Mr. M.S.Joshi, Addl. A.G. Punjab.

Mr. A.K. Kalsy, Advocate
and Mr. Abhimanyu Kalsy, Advocate
for the complainant.

AMARJOT BHATTI, J.

1. The petitioner Daksh Aadia has filed the instant revision against impugned order dated 06.12.2019 passed by learned Additional Sessions Judge, Ludhiana vide which application filed by the petitioner along with others for supplying the copies of Whatsapp chat, other network data, call details of cell phone No. 98728-21121 has been dismissed.

2. The brief facts of the case are that FIR No. 219 dated 02.10.2017, under Section 304-B, 120-B of IPC, Police Station Division No. 4, Ludhiana was registered on the statement of complainant Vipin Kumar Dhir, father of the deceased victim. He stated that his daughter i.e. the victim was married to Gaurav Aadia on 28.07.2017. He had performed

marriage by spending Rs. 35/40 lacs. She was ill treated in the matrimonial home for not giving a car in the marriage. They were raising demand for a car or a cash of Rs. 7 lacs. They were unhappy with the dowry articles and for this reason, his daughter was ill treated in the matrimonial home. His daughter used to tell about the conduct of her husband and in-laws family. It is stated that on 01.09.2017, he received call from Gaurav to reach DMC Hospital, Ludhiana where her daughter was admitted in a miserable condition. As per the version of complainant, she was made to consume some poisonous substance by her in-laws family. She expired during treatment in the morning of 02.10.2017. With these allegations, the present FIR was registered.

The challan was presented. The charge-sheet was also framed and the case was fixed for prosecution evidence, when the application was filed by the accused for giving direction to the Investigating Officer to send mobile phone make Samsung company bearing sim card No. 98728-21121 to CFSL department to retrieve the data of Whatsapp chatting, Facebook chatting, any other social networking, messages in any form by retrieving the same from the software of the said cell phone which was having two sim cards for just and fair decision of the case. The said application was allowed by learned Additional Sessions Judge, Ludhiana vide order dated 05.12.2018. Thereafter, the accused filed the application for giving direction to the prosecution to supply the copies of Whatsapp chatting etc. to the accused, so that they are able to go through the said data and could confront the relevant witnesses. The said application was declined by learned Additional Sessions Judge, Ludhiana by passing impugned order dated 06.12.2019. Feeling aggrieved of this order, the

present revision has been filed.

3. The learned counsel for the petitioner argued that the aforesaid data is necessary for just and final decision of the case. The petitioner can prove this data in defence and it is also required to confront the data to the relevant witnesses during trial. Otherwise, it will not be possible for the petitioner to confront the witnesses at a later stage and it will prolong the litigation unnecessarily. Under these circumstances, the impugned order dated 06.12.2019 passed by learned Additional Sessions Judge, Ludhiana is not justified. It is prayed that the revision preferred by the petitioner may be accepted by setting aside the impugned order dated 06.12.2019 and necessary direction be given to supply the said data to the petitioner for fair trial of the case.

4. On the other hand, learned counsel representing the State and learned counsel for the complainant raised the issue that in the previous order dated 05.12.2018, it was made clear that the petitioner/accused facing trial in this case will be able to prove the said data in defence. The accused have already received the CFSL report dated 09.10.2019 free of cost on 15.10.2019. The present application filed at a later stage for using the data to confront the witnesses is not at all justified. The petitioner will get full opportunity to defend his case by leading evidence. He is not going to suffer any prejudice. The petitioner by filing this application intends to review the previous order dated 05.12.2018. On this point, he has relied upon the authority in **2019(3) PLR 593 Supreme Court of India**, case titled as **Atul Shukla Versus State of Madhya Pradesh & Anr.**, where while dealing with the provisions of Section 362 and 482 of Criminal Procedure Code, 1973, it was held that “in an application under Section

Section 482 Cr.P.C.” The revision preferred by the petitioner is without merits, therefore, the same may be dismissed.

5. I have considered the arguments and have gone through the record. It is a matter of record that by passing order dated 05.12.2018, application filed by the accused was allowed and with the orders of the Court, the data of mobile phone bearing sim card no. 98728-21121 (having two sims) i.e. Whatsapp chatting, Facebook chatting, any other social networking, messages in any form was retrieved by sending it to CFSL department and the report of CFSL department was called for. The present case was fixed for prosecution evidence. The statement of complainant Vipin Kumar Dhir as PW-1 was recorded and thereafter, one application was filed under Section 319 Cr.P.C. to summon the additional accused. Thereafter, the counsel for accused filed the application to supply the aforesaid data to use the same for confronting the witnesses which was declined vide impugned order. The aforesaid cell phone belonged to the victim. Therefore, the data already retrieved from the cell phone is material piece of evidence. The CFSL report dated 09.10.2019 is already supplied to the accused as per statement dated 15.10.2019. It will enable the accused to prepare their defence in a proper manner. The trial Court will be able to decide the case in a fair manner by considering all the facts and circumstances of the case. It is rightly pointed out by learned counsel for the petitioner that on receiving the aforesaid data, he will be able to cross-examine the relevant witnesses by confronting them with the said data, otherwise, he will be deprived of his valuable right to cross-examine the witnesses in an effective manner. It is the duty of the Court to give fair opportunity to the prosecution as well as to the accused to lead their

respective evidence in a proper manner, so that the Court is able to reach at the right conclusion. The restriction imposed by the trial Court that the accused can prove this data only by leading evidence in defence is not justified. The first application was filed to retrieve the data of aforesaid mobile phone and the second application is to supply the data to confront the relevant witnesses. Therefore, in my opinion, the second application does not amount to review of the previous order. The authority relied upon by the learned counsel for the respondent/complainant is not applicable to the facts of the present case. The condition imposed on the accused that he can use the aforesaid data in defence only is without justification.

Therefore, considering the aforesaid factual position, the impugned order dated 06.12.2019 passed by learned trial Court is not justified and the same is accordingly, set aside by accepting the present revision.

Pending application(s), if any, also stands disposed of.

29.03.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No