

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRR-1226-2023 (O&M)
Date of decision: 11.05.2023

Juvenile-in-Conflict with Kxxxxx @ DxxxxxPetitioner

Versus

State of HaryanaRespondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Harikesh Singh, Advocate and
Mr. Surender Pal, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner (child in conflict with) has challenged order dated 01.03.2023 vide which an application moved by him for summoning the case diary/zimni, from 15.02.2018 to 21.02.2018, in case FIR No.102 dated 15.02.2018 under Sections 302, 396, 397, 483, 201 and 120-B of the IPC and Section 25 of the Arms Act, 1959, was dismissed by learned Additional Sessions Judge, Kaithal.

2. Learned counsel for the petitioner submits that the Court below had erred in dismissing his application, vide the impugned order, by not appreciating the facts of the case in their right perspective. While drawing the attention of this Court to the allegations levelled in the FIR which has been annexed as Annexure P-1, it has *inter alia* been submitted that a perusal of the same clearly shows that the petitioner was not named therein. The name of the petitioner came to be nominated as an accused only in the statement recorded under Section 161 of the Cr.P.C. of one Jai Bhagwan @ Bhanu, and who was now being sought to be projected as an eye witness to the occurrence in

question, by the prosecution. It has still further been submitted that a perusal of the FIR in question clearly reveals that the presence of alleged eye witness, Jai Bhagwan @ Bhanu, was not even shown at the place and at the time of the alleged occurrence. Furthermore, when the complainant stepped into the witness box as PW1, he too admitted during his cross-examination that Jai Bhagwan @ Bhanu was not present when the occurrence in question took place. Learned counsel has thus submitted that it was apparent that the statement of Jai Bhagwan @ Bhanu had not been recorded on 15.02.2018 and in all likelihood had been recorded by some other official. Hence, in the aforesaid circumstances, it was all the more necessary for the Court below to call for the case diary/zimnis from 15.02.2018 to 21.02.2018, so that the petitioner's right to a fair trial was not defeated.

3. Learned counsel for the petitioner has further argued that the Court below had failed to appreciate that the provisions of Sections 172(1)(a) and 172(1)(b) of the Cr.P.C. provided that the statements of the witnesses under Section 161 of the Cr.P.C. must be inserted in the case diary maintained by the investigating agency. Hence, the statements recorded under Section 161 of the Cr.P.C., which form part of the case diary, cannot be made available only to the prosecution and withheld from the accused.

4. Learned counsel has also referred to Punjab Police Rules (as also applicable to the State of Haryana) Sub Rule 1 of Rule 25.55 by urging that case diary has to be forwarded along with the case file meaning thereby that it was very much available for the Court not only to see but also to contradict and confront the police officer.

5. Learned counsel has thus urged that the Trial Court had failed to appreciate that the case diary would also aid the Court during trial.

6. I have heard learned counsel and perused the relevant material on record.

7. The short law point involved for the consideration of this Court is whether the petitioner who is an accused, facing trial, is entitled to direct the prosecution to produce the case diary. The answer to this question is in the negative in the light of the embargo imposed by Section 172(3) of the Cr.P.C. which is reproduced hereinunder:-

“172. Diary of proceedings in investigation.

(1) XXX XXX XXX

(2) XXX XXX XXX

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.”

8. A perusal of the above reproduced provisions of Section 172(3) of the Cr.P.C. leave no manner of doubt that neither the accused is entitled to call for, nor can he peruse the case diary. The object behind maintaining a case diary is to have a complete record of the investigation carried out by the investigating agency in a crime. Section 172 of the Cr.P.C. gives a special right only to the Court to call for, and inspect the case diary but no such right has been given to the accused. The police diary is only a record of the day to day investigation carried out by the investigating agency. The entries in the case diary cannot be

used as substantive evidence as per Section 172(2) of the Cr.P.C. but can only be used for a limited purpose by the Court to clear its doubts which may arise during the course of trial. Besides this, a police officer/investigating officer of a criminal case, can also use the case diary but yet again only for the limited purpose of refreshing his memory, while deposing in a Court of Law in terms of the provisions of Section 172(3) of the Cr.P.C. as reproduced hereinabove. The grievance of the petitioner in the case in hand would surely be addressed to, in case the police officer takes the help of the case diary to refresh his memory as then he would be entitled to contradict him during his cross-examination as per Section 161 of the Indian Evidence Act, 1872. Not only this, if during the course of trial, any doubt creeps in the mind of the Court, there is nothing which precludes it from perusing the case diary. Having said all that, it needs to be reiterated that an embargo has been created by virtue of Section 172(3) of the Cr.P.C. on the right of the accused to call for the case diary since it is a privileged document which under no circumstances can be made accessible to the accused. A Three Judge Bench of Hon'ble Supreme Court in *Mukund Lal and another Vs. Union of India : 1989 AIR 144* while dealing with the case diary and entries therein has also categorically held that only a Court is entitled to call for the case diary/zimni and examine the same.

9. In view of the above discussion, the instant petition is dismissed being devoid of any merit.

11.05.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No