

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

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CRM-M-36564-2023 (O&M)

Date of decision: 17.08.2023

Lakhan Kumar

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Mohan Singh Chauahn, Advocate for the petitioner.

Mr. Jagdish Manchanda, Addl. AG, Haryana.

AMAN CHAUDHARY, J

1. The present petition has been filed for quashing of order dated 03.07.2023, Annexure P-2, passed by learned Additional Sessions Judge, Ambala to the extent of not issuing direction to preserve the call details record including tower location of all the police officials who took away the petitioner on 18.12.2022 from his house and implicated the petitioner in the FIR No.750, dated 19.12.2022, registered at Police Station Ambala Cantt.

2. Learned counsel contends that the petitioner has been falsely implicated in the present case. An application was filed by him under Section 91 CrPC, seeking direction by the trial Court to preserve the call and tower location of mobiles of police officials by naming them on the ground that he had alleged having been picked up from his house on 18.12.2022 at about 11.20 p.m. to 11.50 p.m. and shown as arrested on

19.12.2022 at 3.20 p.m. The entire night, the petitioner was with the police officials. The trial court has allowed his application only qua one mobile number mentioned therein and of SI Rajinder Singh, whereas in the application the prayer was regarding other named police officials as well. He also relies upon the judgments in **Upashu and another vs. State of Punjab and others**, 2021 (3) RCR (Criminal) 75, **Suresh Kumar vs. Union of India**, 2015 (3) RCR (Criminal) 340; **Ajay Nogare s/o Kailash Nogare vs. State of Madhya Pradesh**, 2021 (3) Crimes 137 and **Kapil vs. State of Rajasthan**, 2021 (3) Cri.L.R. (Raj) 823.

3. On receipt of advance notice, Mr. Jagdish Manchanda, Addl. AG, Haryana puts in appearance on behalf of the respondent-State and submits that the trial Court has rightly passed the order, thus, he prays for the dismissal of the present petition.

4. Heard.

5. It would be apposite to refer to the relevant paras of **Upashu** (supra) which read thus:

“8. Having considered the matter, I fail to understand as to how the Special Judge (trial court) has held that the petitioner has failed to establish any connection with the mobile numbers the details of which he seeks, to the case in question, because other than the fact that the purpose of the application would be very obvious, even as per the rejoinder filed to the reply filed before that court by the prosecution, (to the application of the petitioner), it has been stated that the connection is simply to show that the petitioner along with some police officials was taken from the Ramgarhia Gurudawara Sahib, Dhuri, through a particular route and was not arrested near Village Benra after 10.20 p.m.

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10. Having said that, it is also made absolutely clear that other than directing that the call details records of the said mobile numbers and subscribers thereto be submitted to the trial court, this court has not made any observation, whatsoever, as to the correctness of the contention of the petitioner with regard to the actual relevance of those numbers or whether he was arrested or not arrested at any particular place, which would be evidence that would be gone into and appraised by the trial court upon the call details records of the said telephone numbers being presented before it.”

6. In **Suresh Kumar** (supra) it was observed that, “All that we are concerned with is whether call details which the appellant is demanding can be denied to him on the ground that such details are likely to prejudice the case of the prosecution by exposing their activities in relation to similar other cases and individuals. It is not however in dispute that the call details are being summoned only for purposes of determining the exact location of the officers concerned at the time of the alleged arrest of the appellant from Yashica Palace hotel near the bus stand. Ms. Makhija made a candid concession that any other information contained in the call details will be of no use to the appellant and that the appellant would not insist upon disclosure of such information. That in our opinion simplifies the matter inasmuch as while the call details demanded by the appellant can be summoned in terms of Section 65B of the Indian Evidence Act such details being relevant only to the extent of determining the location of officers concerned need not contain other information concerning such calls received or made from the telephone numbers concerned. In other words if the mobile telephone numbers called or details of the callers are blacked out of the information summoned from the companies concerned it will protect the respondent against any possible prejudice in terms of exposure of sources of information

available to the Bureau. Interest of justice would in our opinion be sufficiently served if we direct the Trial Court to summon from the Companies concerned call details of Sim telephone No. 9039520407 and 7415593902 of Tata Docomo company and in regard to Sim No. 9165077714 of Airtel company for the period 24.02.2013 between 4.30 to 8.30 p.m.. We further direct that calling numbers and the numbers called from the said mobile phone shall be blacked out by the companies while furnishing such details. “

7. It is apparent from perusal of the application that the prayer of the petitioner was as under:

“In view of the facts and circumstances mentioned above it is respectfully prayed that order dated 03/07/2023 (Annexure P-2) passed by the Ld. Additional Sessions Judge, Ambala may kindly be quashed to the extent of not issuing direction to preserve the call details record including tower location of the all the police officials (names mentioned in para No.3 of the petition) who took away the petitioner on 18/12/2022 from his house at around 11:30 PM and implicated the petitioner in the FIR No. 750 dated 19/12/2022 Police Station Ambala Cantt (Annexure (P-1/T) showing arrest at 4:30 PM on 19/12/2022 on the basis of secret information.

Any other order or direction which this Hon'ble court deems fit and appropriate in view of the facts and circumstances of the petitioner case and in the interest of justice, equity and fair play.”

8. In the present case, the trial Court has rightly placed reliance on the judgment in **Upashu** (supra), however, the call details and tower location qua only SI Rajinder Singh and one mobile number have been directed to be preserved, though, the application was regarding the other police officials as well, namely, EASI Nitesh Kumar, EHC Balvinder Singh, EHC Randeep Singh, Constable Rohit Kumar, EHC Vikram Singh,

SI Shamsher Singh and SI Varinder Walia, as the petitioner has stated that the said personnel were present at his house, from where he was picked up but shown to be arrested on the next day.

9. It is trite that principles of natural justice are an integral part of the fair trial and it is the duty of the Court to discover the truth.

10. Considering the facts and circumstances of the case and in the interest of justice, the impugned order dated 03.07.2023, is modified to the extent that the investigating agency is directed to obtain the call details including the tower location of the mobiles of the persons so named in the application filed by the petitioner.

11. Disposed of.

17.08.2023

Ankur

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No