



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-15230-2024

Date of Decision: September 18, 2024

M/S EAST INDIA TRANSPORT AGENCYPetitioner(s)

VERSUS

STATE OF HARYANA AND OTHERSRespondent(s)

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.K. Liberhan, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J.(ORAL)

Learned counsel for the petitioner has initiated the instant petition invoking the jurisdiction of this Court under Section 482 Cr.P.C. for setting aside order dated 29.02.2024 whereby the application for seeking fair, transparent and impartial investigation was dismissed being devoid of merits.

Learned counsel for the petitioner asserted that the investigating officer is not in full support of the case of the petitioner wherein he has repeatedly requested for the examination of the tower locations, mobile phone, call details and toll plaza receipts revealing the movements of the vehicle in question i.e. truck bearing registration No.RJ-40GA-1674 wherein suparis were being transported.

Further the petitioner sought examination qua the GPS tracker installed in the aforementioned truck and failing to receive the information



has finally been compelled to approach the trial Court vide application dated Nil (Annexure P-2) which stands dismissed by the trial Court wherein the same has been assailed before this Court.

Reliance can be placed upon the judgment of the Apex Court rendered in *A.V.Bellarmin vs Mr.V.Santhakumaran Nair (Madras High Court)* wherein it has been held that free and fair investigation is a matter of right even for the victim. Relevant paras of the said judgment is reproduced as under:-

‘14. Instrumentality of a State and its officials must conform to the Rule of Law leading to fairness in action. It has been well established that fairness is a facet of Article 21 of the Constitution of India. Such a fairness in action is also mandatorily to be followed in a criminal investigation. A right to a fair investigation is not only a constitutional right but a natural right as well. In Sathyavani Ponrani v. Samuel Raj, 2010 (4) CTC 833, while dealing with fair investigation, this Court has held that the same is mandatory under Articles 14, 21 and 39 of the Constitution of India. The following paragraphs would be apposite:

66.Free and Fair Investigation and Trial is enshrined in Article 14, 21 and 39-A of the Constitution of India. It is the duty of the state to ensure that every citizen of the country should have the free and fair investigation and trial. The preamble and the constitution are compulsive and not facultative, in that free access to the form of justice is integral to the core right to equality, regarded as a basic feature of our Constitution.

Therefore such a right is a constitutional right as well as a fundamental right. Such a right cannot be confined only to the accused but also to the victim depending upon the facts of the



case. Therefore such a right is not only a constitutional right but also a human right. Any procedure which comes in a way of a party in getting a fair trial would in violation of Article 14 of the Constitution.

67.The Hon'ble Apex Court in *ZAHIRA HABIBULLA H. SHEIKH v. STATE OF GUJARAT* [(2004) 4 SCC 158] has observed as follows:

"36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all- comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result



in a fair trial. The failure to hear material witnesses is certainly denial of fair trial."

68. Similarly in *TASHI DELEK GAMING SOLUTIONS LTD. v. STATE OF KARNATAKA* [(2006) 1 SCC 442], the Hon'ble Apex Court has observed as follows: "37. If the agent was to be prosecuted for violation of the term of the notification, he could challenge the validity thereof. A fortiori, a quia timet application would also be maintainable. A person must be held to have access to justice if his right in any manner whether to carry on business is infringed or there is a threat to his liberty. Access to justice is a human right.

38. In *Dwarka Prasad Agarwal v. B.D. Agarwal* [(2003) 6 SCC 230] this Court opined: (SCC pp.245-46, para 38) "A party cannot be made to suffer adversely either indirectly or directly by reason of an order passed by any court of law which is not binding on him. The very basis upon which a judicial process can be resorted to is reasonableness and fairness in a trial. Under our Constitution as also the international treaties and conventions, the right to get a fair trial is a basic fundamental/human right. Any procedure which comes in the way of a party in getting a fair trial would be violative of Article 14 of the Constitution of India. Right to a fair trial by an independent and impartial tribunal is part of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 [see *Clark (Procurator Fiscal, Kirkcaldy) v. Kelly* [(2003) 1 All ER 1106(PC)]."

69. In *NIRMAL SINGH KAHLON v. STATE OF PUNJAB* [(2009) 1 SCC 441], the Hon'ble Apex Court was pleased to observe that the right to fair investigation and trial is applicable to the accused as well as the victim and such a right to a victim is provided under Article 21 of the Constitution of India. The observation of the Hon'ble Apex Court is extracted hereunder:



"28. An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation. When serious allegations were made against a former Minister of the State, save and except the cases of political revenge amounting to malice, it is for the State to entrust one or the other agency for the purpose of investigating into the matter. The State for achieving the said object at any point of time may consider handing over of investigation to any other agency including a Central agency which has acquired specialisation in such cases."

15. In *Azija Begum v. State of Maharashtra*, (2012) 3 Supreme Court Cases 126, the Apex Court has held as follows:

'13. The issue is akin to ensuring an equal access to justice. A fair and proper investigation is always conducive to the ends of justice and for establishing the rule of law and maintaining proper balance in law and order.?

16. In *Subramanian Swamy v. CBI*, (2014) 8 Supreme Court Cases 682, the Apex Court has ruled that any investigation into crime should be fair and should not be tainted. It has been further held that Rule of Law is a facet of equality under Article 14 of the Constitution of India.

17. In *Dayal Singh v. State of Uttaranchal*, (2012) 8 SCC 263, the Supreme Court has held that the Court is bound to record any deliberate dereliction of duty, designed defective investigation, intentional acts of omission and commission.

18. Therefore, fairness in an action leading to upholding rule of law is a sine qua non of a criminal investigation.'



Learned State counsel contends that the investigation has been done in a fair manner to speed up the trial wherein it has been found that the instant case involves chain of persons who are involved in commission of the offence but could not controvert the fact that the supari/betel worth Rs.75 lakhs is yet to be recovered.

Be that as it may, this Court is of the considered view that a nexus is to be cracked to unveil the conspiracy involved in the commissioning of offence wherein after disclosure statement of all accused, the supari/betel worth Rs.75 lakhs is yet to be recovered, therefore, suffice for this Court to intervene in the course of the investigation and to exercise the powers as vested with it under Section 482 Cr.P.C./528 BNSS, 2023. Hence, the investigating officer is hereby directed to consider the instant petition and the application (Annexure P-2) filed before the trial Court, on the representation on behalf of the petitioner and to consider the issues raised by the petitioner during the course of investigation.

This Court in the light of the aforementioned view of the Apex Court, is also of the opinion that the petitioner/victim falls under the ambit of the Article 21 of the Constitution of India, therefore the right of the victim person also deserves to be protected under the ambit of law. And the access to justice is a human right which cannot be forgoed.

Petition in the aforesaid terms stands disposed of.

(SANDEEP MOUDGIL)
JUDGE

18.09.2024

Sangeeta

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