



244 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33074-2018 (O&M)
Date of Decision: 28.08.2024

RAJEEV BUDHIRAJA

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Deepinder Singh, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR J. (ORAL)

1. Present petition has been filed under Section 482 of Cr.P.C. seeking setting aside of order dated 16.07.2018 passed by learned Judicial Magistrate Ist Class, Faridabad, rejecting the application of the petitioner under Section 91 of Cr.P.C. arising out of proceedings in FIR No. 252 dated 17.05.2016 registered under Sections 354-D, 506 of Indian Penal Code at Police Station Faridabad Central, District Faridabad and consequently for allowing the application (Annexure P-4).

2. Learned counsel for the petitioner-husband *inter alia* contends that perusal of Annexure P-3 clearly indicates that the Nodal Officer of Airtel was requested on 04.08.2016 by the S.H.O. Police Station Faridabad, for providing call details along with tower location of the mobile phones of the petitioner as well as complainant. The abovesaid CDR and tower location are already in possession of the Investigating Agency and the learned Court below has passed the impugned order without considering the actual facts and circumstances of the case as it is a trite law that no person can be denied to rely upon the best



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available evidence i.e. the purpose of Section 91 of Cr.P.C. to aid the trial Court in discovery of truth. Investigating Agency has acted in a partisan manner and withheld the relevant information, which goes to the root of the controversy and would help the accused in proving his innocence and any such action would amount to denying free and fair trial as enshrined under Article 21 of Constitution of India.

3. Per contra, learned State counsel submits that learned Court below has rightly dismissed the application filed by the petitioner as call details have been extracted from the mobile phone of the complainant. However, he could not controvert the fact that the application was made by the concerned SHO to Nodal Officer of Airtel and it is further submitted that the case is listed at the stage of defence evidence.

4. Having heard learned counsel for the parties and after a perusal of the record, it transpires that the learned trial Court has dismissed the application filed by the petitioner under Section 91 Cr.P.C. on the ground that the call details of the mobile phone of the accused taken by the police for the period 01.04.2016 to 18.05.2016 contains the details of the mobile calls both income and outgoing on his mobile number including calls from the mobile number of the complainant, so no further need was felt to take separate call details of the mobile phone of the complainant.

5. A perusal of the application filed by the petitioner (Annexure P-3) indicates that the accused has taken a specific ground that the police during investigation has not taken the call details of mobile No. 981074199 belonging to the complainant which were very necessary for the decision in this case. In the FIR, it is alleged that accused with his mobile phone No. 9810757677 made



the call upon the said mobile number of the complainant on 24.04.2016 and used filthy language. Whereas, it was averred that the accused-petitioner has some financial transactions with brother of the complainant and to make pressure over the accused, the present FIR has been registered and the police has not taken the call details of the complainant mobile number, which is very essential in the matter.

6. A two Judge Bench of the Hon'ble Supreme Court in ***Suresh Kumar Vs. Union of India 2015 (3) RCR (Criminal) 340*** has considered the necessity and desirability of preserving the call detail records and tower location at the behest of the accused under the NDPS Act and speaking through Justice T.S. Thakur has held as under:-

“That electronic records are admissible evidence in criminal trials is not in dispute. Sections 65A and 65B of the Indian Evidence Act make such records admissible subject to the fulfilment of the requirements stipulated therein which includes a certificate in terms of Section 65B(4) of the said Act. To that extent the appellant has every right to summon whatever is relevant and admissible in his defence including electronic record relevant to finding out the location of the officers effecting the arrest. Be that as it may we do not at this stage wish to pre-judge the issue which would eventually fall for the consideration of the Trial Court.”

7. For proper adjudication of the issue, it would be apt to reproduce Section 91 Cr.P.C, which is as under:-

“91. Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any



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investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed--

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

8. Preserving and requisitioning of the call details and tower location details would be necessary, otherwise the same would be lost forever. The right of accused to invoke the provisions of Section 91 Cr.P.C. for obtaining documents in support of his defence has been recognized by the Constitutional Courts. The legislative intent behind enactment of Section 91 Cr.P.C. is to ensure that no cogent material or evidence involved in the issue remains undiscovered in unearthing the true facts during investigation, enquiry, trial or other proceedings and this would facilitate the learned trial Court in discovering the truth and rendering justice, which is fair to all stake holders.

9. The denial of an adequate opportunity to the accused by non-production of the electronic record, which is admissible under Section 65-A



and 65-B of the Indian Evidence Act in criminal trial, would amount to miscarriage of justice. Section 91 Cr.P.C. helps in facilitating a fair and just resolution to the case by ensuring that relevant evidence is made available to the Court for making informed decisions and arrive at a just and fair outcome. It enables the Court to secure important documentary evidence that may be in possession of individuals or organization and helps prevent the destruction, tampering or loss of crucial documents, thereby maintaining the integrity of the judicial process. The power under 91 Cr.P.C. must be exercised for production of such evidence, which would assist the Court in discovering the truth in the pursuit of justice. However, the right of privacy of the complainant cannot be breached at the ipse dixit of the accused. Before any such order for production of call details/tower location is passed, the accused is required to prove necessity and desirability of such evidence, which would be relevant to establish the guilt or innocence of the accused.

10. As principles of natural justice are integral part of fair trial under Article 21 of the Constitution of India, any denial of the best available evidence or effective and substantial hearing to accused in proving defence would amount to denial of free and fair trial.

11. In view of the observations made hereinabove and without going into the merits of the case, the impugned order dated 16.07.2018 (Annexure P-5) is hereby set aside. The learned trial Court is directed to pass necessary directions under Section 91 Cr.P.C. for preserving and production of the call details/tower location details of the phone numbers mentioned in (Annexure P-3) attached with the application (Annexure P-4) filed under Section 91 Cr.P.C.

12. The instant petition stands disposed of in above terms.

13. Needless to say that anything observed by this Court is only for the purpose of deciding the present petition and the trial Court is directed to decide the case on its own merits.

(HARPREET SINGH BRAR)
JUDGE

28.08.2024
Ajay Goswami

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No