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227 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-34243-2019 (O&M)

Date of Decision: 19.09.2024

ASHISH

...PETITIONER

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Namit Khurana, Advocate
for the petitioner.Mr. Rishabh Singla, AAG Punjab assisted by
Mr. TarunSeth, Advocte for the complainant.

HARPREET SINGH BRAR J. (ORAL)

1. The petitioner is challenging the impugned order dated 16.07.2019 passed by the learned Judicial Magistrate Ist Class, Yamuna Nagar in criminal case No. CHI/31926/2013 pending trial in FIR No. 87 dated 31.08.2012 registered under Sections 148, 149, 341, 323, 506, 427, 354 of Indian Penal Code at Police Station Buria District Yamuna Nagar, whereby the application under Section 91 of Cr.P.C. has been dismissed.

2. Learned counsel appearing for the petitioner *inter alia* contends that after completion of investigation in FIR(supra), the petitioner was found innocent and thus, not challaned and kept in column No. 2. Thereafter, during the course of evidence, complainant moved an application under Section 319 of Cr.P.C. for summoning the petitioner as additional accused and the said application was allowed by learned trial Court and resultantly, the petitioner was summoned as additional accused in the present case.

3. Learned counsel for the petitioner further contends that during the pendency of trial, when the case was fixed for defence evidence, the petitioner

had moved an application under Section 91 Cr.P.C. before the learned trial Court.

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It was averred in the said application that during the course of investigation, Investigating Officer had taken into possession the call details of mobile numbers alongwith locations (tower dump) and also took affidavits with regard to alleged incident and though the said documents were taken into possession but prosecution has not attached the said documents with challan and for proper and just decision of the case, the summoning of said document was necessary. But learned trial Court dismissed the said application filed by the petitioner. Any denial of these details would seriously prejudice the case of the petitioner to prove his innocence. Moreover, the electronic record is admissible in terms of Sections 65-A and 65-B of the Indian Evidence Act. The learned trial Court has not considered the issue in right earnest rather rejected the application filed by the petitioner in a mechanical manner without assigning any reason.

4. Per contra, learned State Counsel assisted by learned counsel for the complainant contends that learned trial Court has rightly rejected the application filed by the petitioner on cogent grounds as all the relevant documents had already been placed on the case file with the final report and copies of the same had been supplied to the accused-petitioner. He further submitted that the alleged documents have no relevancy in the present case.

5. 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 during investigation of the case, the police collects various documents for the purpose of investigation, but all the said documents cannot be placed with the challan as only the relevant documents are necessary to be placed on the case file and the petitioner has not mentioned the purpose of collecting such call details and tower



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locations and without disclosing the necessity and relevancy of such evidence, the application filed by him cannot be allowed.

6. A perusal of the pleadings raised in the present petition indicates that during the course of investigation, Investigating Officer had taken into possession the call details of mobile numbers along with locations (tower dump) and also took affidavits with regard to alleged incident and though the said documents were taken into possession but prosecution has not attached the said documents with challan and for proper and just decision of the case, the summoning of said document was necessary.

7. 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.”

8. 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 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.”

9. 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. The right of the accused under Article 21 of the Constitution of India in ensuring free and fair investigation/trial would prevail. Some extent of privacy can be breached in production of the said call details, as this would facilitate the learned trial Court in discovering the truth and rendering justice, which is fair to all stake holders.

10. 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



important documentary evidence that may be in possession of individuals or organization and helps to 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.

11. 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.

12. In view of the observations made hereinabove and without going into the merits of the case, the impugned order dated 16.07.2019 (Annexure P-4) is hereby set aside. The learned trial Court is directed to pass necessary directions under Section 91 Cr.P.C. to Investigating Agency for production of the material including call details in the possession of Investigating Officer sought by petitioner in the application filed under Section 91 Cr.P.C.

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

(HARPREET SINGH BRAR)
JUDGE

19.09.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No