

THE HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

Case No.	:	MCRC No.51140/2019
Parties name	:	Lokesh Solanki S/o Mr. Rajesh Solanki vs. State of M. P.
Date of Judgement	:	20/02/20
Bench constituted of	:	Hon'ble Mr. Justice Shailendra Shukla
Judgement delivered by	:	Hon'ble Justice Mr. Shailendra Shukla
Whether approved for reporting	:	Yes
Name of counsels for the parties	:	Mr. S.K. Vyas, learned senior counsel along with Ms. Sonali Goyal, counsel for the applicant. Shri Anil Ojha, learned Public Prosecutor for the non-applicant – State.
Law laid down	:	Trial Court's order directing sending the seized mobile phone for retrieving its recording to FSL during trial, whether valid ? Held-Yes. Although such an order amounts to collection of evidence at trial stage, for ends of justice, such an order can be passed by the trial Court. Judgments of Hon'ble Apex Court relied upon.
Significant paragraph numbers	:	Paragraphs 11, 12 and 13.

ORDER
(Passed on 20th day of February 2020)

The petitioner has filed the petition under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.PC') seeking quashment of order dated 18.11.2019 passed by learned 02nd Additional Sessions Judge, in Sessions Trial No.632/2016 by which the learned Judge has allowed the application filed by the prosecution to send the seized mobile phone for data recovery to Regional Forensic Science Laboratory, Hyderabad.

2. The facts of the case in nutshell was that accused persons had conspired to kill Jai Singh, a lawyer practicing at Mhow, District-Indore. The plan was to be carried out while Jai Singh would proceed in his Verna car and modus-operandi would be to strike his car with Dumper driven by one of the co-accused persons. Such conspiracy was hatched by co-accused-Mangilal who was inside the jail and who was the chief conspirator at whose behest such conspiracy was hatched. He had given telephonic instructions through mobile phone from inside the jail. On 29.03.2016, accused-Ramsingh drove the dumper and struck the Verna car carrying Jai Singh Thakur. While Jai Singh escaped with injuries, two motorcycles were struck by the Dumper and one occupant of each of these motorcycles succumbed to their injuries. Initially offence under Sections 304-A, 337, 279 IPC was registered but after investigation offence under Sections 302, 307, 120-B IPC were added.

3. During investigation, a CD allegedly containing the conversations between witness Hirasingh and Umabai was

seized. As per prosecution story, the conversation threw light on the conspiracy which was hatched. This CD was prepared by witness-Banesingh. The mobile from which the CD was burnt was seized from Hirasingh. However, this mobile phone when tried to be used at the time of examination of Hirasingh, the same did not get activated despite charging the same. Therefore, the prosecution filed an application to send the mobile to FSL in order to retrieve the recording. Vide impugned order, the Presiding Officer has sent the mobile to Forensic Science Laboratory (FSL) so that recording contained therein can be retrieved.

4. The impugned order has been challenged on the ground that Hirasingh has refused to identify the mobile phone as his own, that Umabai in her Court deposition has denied to have been spoken to Hirasingh, that it was not the part of duty of learned trial Court to send the mobile phone to regional Forensic Science Laboratory, that once Hirasingh had made statements disowning the mobile belonging to him, the recording if any, in the aforesaid mobile phone has ceased to be of any relevance. Hence the order has been sought to be set-aside.

5. During submissions, learned senior counsel for the petitioner has submitted that seizure memo also does not show that the mobile phone carries any recording and Investigating Officer (IO) himself never heard any recording of the mobile phone and thus, there is no evidence that the aforesaid mobile phone contained any recording.

6. Learned public prosecutor for the State has submitted that witness-Banesingh who provided the CD to the

Investigating Officer (IO) contained conversations which would throw light on the conspiracy hatched which is extremely relevant and that the conversation was recorded from the seized mobile only and it is extremely important to retrieve the recording from the mobile phone which would have primary evidence and therefore for just decision of the case, it was appropriate on the part of the Presiding Officer of trial Court to send the mobile phone to the FSL.

7. Heard learned counsel for the parties.

8. The documents were perused.

9. No attempt was made by the Investigating Officer (IO) to see as to whether the CD provided by the witness-Banesingh was infact made from the mobile phone seized from Hirasingh.

10. It can be seen that after investigation was over, trial ensued and such an application was filed. What is aimed to obtain is collection of evidence at the trial stage. The only question is whether the evidence can be allowed to be collected during the course of trial.

11. As per the provisions of Criminal Procedure Code, after completion of investigation in cognizable offence, the police files final report under Section 173(8) of Criminal Procedure Code, commonly known as chargesheet. After such report has been forwarded to the Magistrate, at times, the police conducts further investigation as well, under Section 173(8) of Criminal Procedure Code. However, whether such exercise can be gone into at the post cognizance stage was a matter which needed to be thrashed out. The Hon'ble Apex Court in number of citations such as in the case of H.N.

Rishbud vs State of Delhi AIR 1955 SC 196 paved the way for further investigation even after the Magistrate had taken the cognizance. In the case of **Hemant Dhasmana vs CBI and Another 2007 1 SCC 536**, it was held that power of police to conduct further investigation can be triggered out at the instance of the Court. In the case of **Randhir Singh Rana vs State (Delhi Administration) 1997 Vol.1 SCC 361**, it was held that Magistrate cannot suo motu direct further investigation or direct reinvestigation but an application has to be filed before him. In the case of **Amrutbhai Shambhubhai Patel vs Sumanbhai Kantibhai Patel 2017 4 SCC 177**, it was held that after cognizance has been taken, further investigation under Section 173(8) of Criminal Procedure Code, cannot be directed either suo motu or at the behest of complainant. However, recently the three Bench Judge of Hon'ble Apex Court in the case of **Vinubhai Haribhai Malviya vs State of Gujarat in 2019 SCC Online SC 1346** has held as under:

“It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the Court to the extent that even where the facts of the case and ends of justice demanded, the Court can still not direct the investigating agency to conduct further investigation, which it could do on its own.”

Hence no doubt remains that for the ends of justice, in appropriate cases, the Court can order further investigation even at the stage of trial.

12. The word investigation as defined in Section 2(h) of the

Code of Criminal Procedure, 1973 reads as under:

“Investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

13. Sending the mobile phone to FSL in order to retrieve its recording is a part of investigation. In the case in hand, the Presiding Officer vide impugned order has exercised his right to order for further collection of evidence which has been recognized by the Hon'ble Apex Court. Hence, there is no legal impediment in exercising such right in view of the Hon'ble Apex Court citations (supra).

14. Now the question is whether it was proper to exercise such rights in this particular case ?

15. Learned senior counsel for the petitioner submits that witness-Hirasingh from whom the mobile phone has been shown to be recovered by the prosecution, has denied its ownership in his deposition and that seizure memo itself does not state that it contains such recording.

16. This submission in my view is a feeble attempt made by the learned senior counsel for the petitioner to thwart the aforesaid action taken by the trial Court. The mobile phone has been shown to be seized from witness-Hirasingh and the concerned seizure witnesses shall be deposing regarding its seizure from Hirasingh. The seizure memo is not expected to show the contents of the memory card i.e. recording. Hence the submission that seizure memo does not show such recording is of no consequence.

17. After due consideration of the aforesaid and for the

ends of justice, the impugned order has been passed by learned Presiding Officer and there is no impropriety therein. Accordingly, the petition filed under Section 482 of Code of Criminal Procedure, 1973, stands rejected. With the disposal of this petition, the interim stay stands vacated automatically.

18. A copy of this order be dispatched immediately to the trial Court for perusal and compliance.

(SHAIENDRA SHUKLA)
J U D G E

Arun/-