

Asharam @ Ashumal Vs. State

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Court : Rajasthan Jodhpur

Decided On : Nov-06-2015

Appellant : Asharam @ Ashumal

Respondent : State

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B. CRIMINAL MISC. PETITION NO.2172/2015 Asharam @ Ashumal. vs. State of Rajasthan. Date of order :

6. 11.2015 HONBLE MR.JUSTICE SANDEEP MEHTA Mr.Mahesh Bora, Sr.Adv. a/w Mr.Nishant, for the petitioner. Mr.Rajesh Panwar, AAG, for the respondent State. Mr.PC Solanki, for the complainant. 1. Heard learned counsel for the parties.

2. The petitioner has approached this Court by way of the instant misc. petition challenging the order dated 19.6.2015 passed by the learned Sessions Judge, District Jodhpur in Sessions Case No.152/2013 whereby, the application preferred by the petitioner accused under Section 91 Cr.P.C. for summoning the call details of mobile nos.7398489885 and 8765502251 for the period 1.8.2013 to 31.8.2013 was dismissed.

3. Facts in brief are that the petitioner and certain other accused are facing trial in the Court of learned Sessions Judge, District Jodhpur for the offences under Sections 2 342, 376(2)(f), 376D, 354A, 370(4), 506, 509/34, 109 and 120B IPC, Sections 23 and 26 of Juvenile Justice Act and Section 5(f)(g)/6, 7/8 and 17 of the POCSO Act. The Investigating Officer, during the course of investigation collected the call details of the above two mobile numbers which are said to be in use by the victim, her mother and one Karamveer Singh. The call details were filtered as per relevance and produced along with the charge-sheet. The testimony of the victim, her mother and Karamveer Singh was completed at the trial. Extensive and prolonged cross examination was conducted by the counsel representing the accused from these three witnesses. Long after that, on 30.5.2015, the application under Section 91 Cr.P.C. came to be submitted by the accused petitioner before the trial Court.

4. It would not be out of place to mention that two co- accused namely, Ms.Sanchita @ Shilpi and Shiva @ Savaram had long back, filed an application with exactly the same prayer before the trial Court. The said application was dismissed by order dated 28.4.2014. The above two accused approached this Court assailing the order dated 28.4.2014 by way of S.B. Crl. Misc. Petition No.1115/2014. The said misc. petition was rejected by this Court by a detailed order dated 9.5.2014. While rejecting the misc. petition, this Court upheld the finding recorded by the trial Court that the call details being sought to be summoned are not necessary and desirable for the just decision of this case.

5. Thereafter, few of the accused persons filed an application dated 20.5.2014 in the trial Court praying that the call details asked for in the application under Section 91 Cr.P.C. should be kept preserved because the same would be destroyed after 365 days as per the prevalent practice. The said application was also dismissed by the trial Court by order dated 1.7.2014 which was not challenged by any accused.

6. Now when the last prosecution witness namely, the Investigating Officer is being examined at the trial, the petitioner has preferred the application under Section 91 Cr.P.C. as above which has been dismissed by the order under

challenge.

7. Learned senior counsel Mr.Bora heavily relied on the statement of PW22 Ram Kishore examined before the trial Court and urged that the witness, during his cross examination admitted that he saw the victim strolling on the roof outside her room at about quarter to 12 in the night and she was using the phone at that point of time. On the strength of this evidence, learned counsel tried to assert that as the victim was using the phone at about 4 12:00 PM in the night of 15.8.2013, it is essential to summon the call details so that the testimony of the witnesses can be discredited on the strength of these missing call details. It is further asserted in the application that though the prosecution has produced the call record of these SIM numbers with the charge-sheet but the call details for the period between 13.8.2013 to 16.8.2013 are missing. He thus urged that the prosecution cannot be allowed to be selective in producing the call details and, therefore, in order to ensure a fair trial of the case, the entire call details must be directed to be produced before the trial Court.

8. Per contra, learned public prosecutor and learned counsel for the complainant vehemently opposed the submissions advanced by the learned counsel for the petitioner.

9. Heard learned counsel for the parties and perused the material available on record.

10. As per the principles of Criminal Jurisprudence and the Evidence Act, the call details of the mobiles held by a particular person/witness if relevant could be used to confront the witness when he/she is in witness box. When the cross examination of the witnesses was conducted on behalf of the accused petitioner, no request was made to the trial Court for summoning the call details of the missing period referred to above so that 5 the witnesses could be confronted therewith. Only the co-accused Sanchita and Shiva sought the call details but their prayer has been turned down right upto this Court. If at all, the endeavor of the accused petitioner at the trial was that the victim/witness was using the mobile phone at a particular point of time and on a particular day and thereby, his/her testimony would be discredited then it was absolutely essential for the accused to

have made a request to the trial Court to summon the call details at that very point of time so that the witnesses could be confronted with the same.

11. Having failed to put up this request to the trial Court at the stage when the witnesses were deposing, it can safely be assumed that the accused was not desirous of discrediting the testimony of the witnesses on the strength of the call details for the aforesaid period. Thus, it would be against prudence and totally unjust to direct the summoning of the questioned call details at the fag end of the trial.

12. The application preferred by the accused under Section 91 Cr.P.C. is absolutely silent on the issue as to why no such request was made on behalf of the accused petitioner when the witnesses were deposing. Furthermore, the trial Court, while rejecting the petitioners application has observed that the counsel 6 representing the accused moved an application on 20.5.2014 mentioning therein that the call details would be destroyed after 365 days and thus, they should be directed to be preserved. Suffice it to say that the call details which were required to be summoned were for the period between 13.8.2013 to 16.8.2013. More than 2 years have elapsed in the interregnum and thus, going by the stand of the accused themselves, it can safely be presumed that by now the call details must have been deleted from the database of the service provider.

13. This Court is of the firm opinion that the request made by the accused petitioner for summoning the call details has no sanctity whatsoever and was purely an attempt to stall the proceeding before the trial Court.

14. As a result of the above discussion, the instant misc. petition, being devoid of any merit, is hereby dismissed. However, in view of the order pronounced today by this Court in S.B. Criminal Revision Petitions No.981/2015 and 1000/2015, if any new facts are brought on record during the evidence of the nodal officer of the service provider, then the accused shall be entitled to renew their prayer for calling the entire call details, if so advised.

15. Stay petition also stands dismissed. 7 (SANDEEP MEHTA), J.

/S.Phophaliya/

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