

ITEM NO.39

COURT NO.10

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 8916/2015

(Arising out of impugned final judgment and order dated 07-09-2015 in CRLM No. 28545/2015 passed by the High Court of Punjab & Haryana At Chandigarh)

ASHOK KUMAR ARORA

Petitioner(s)

VERSUS

THE STATE OF PUNJAB & ANR.

Respondent(s)

Date : 07-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s) Ms. Aakanksha Nehra, Adv.
Mr. Rabin Majumder, AOR

For Respondent(s) Mrs. Jaspreet Gogia, Adv.
Mr. Kuldip singh, Adv.

Mr. Vasdev Behal, Adv.
Mr. K.G. Bhagat, Adv.
Mr. Vineet Bhagat, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The impugned order passed by the High Court is set aside and restore that of the trial court. Trial court is directed to decide the case expeditiously.

The appeal is allowed.

(NEELAM GULATI)
COURT MASTER (SH)

(TAPAN KUMAR CHAKRABORTY)
BRANCH OFFICER
(signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No(s).1081 OF 2017
(Arising out of SLP(Crl.) No. 8916 of 2015)

ASHOK KUMAR ARORA

Appellant(s))

VERSUS

THE STATE OF PUNJAB & ANR.

Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the parties at length. The complainant has come up in appeal in this Court assailing the order passed by the High Court in Crl. Misc. Case No. 28545 of 2015 decided on 7.9.2015 thereby giving liberty to the accused to examine Suraj-PW4 at the stage of defence.

Earlier when the witness- Suraj was cross examined at length, it was not put forth that there was any recording available with the accused. No such suggestion was given. Later on the accused wanted to confront the said witness with a transcription of his recording. After the statement of the accused had been recorded, prayer was made before the trial court to recall the witness- Suraj (PW4) to admit or deny his voice recorded on the mobile. The prayer was refused by the trial Court vide order dated 7th February,

2015. The accused travelled to the High Court in a revision assailing the aforesaid order. The High Court dismissed the Revision vide order dated 11.03.2015.

Accused moved yet another application, under Sections 315, 243 Cr.P.C. read with Section 65-B of the Evidence Act for proving voice recorded in mobile phone, on 25.3.2015. The said application was partially allowed by the trial court to the extent that accused was allowed to examine himself as his own witness in defence. The prayer with respect to the comparison of the voice of Suraj with the voice recorded in the mobile phone was rejected vide order dated 26.5.2015. The said order also attained finality.

However, unfettered by the rejection of the aforesaid prayers, the accused moved yet another application at the stage of defence evidence to summon him for the same very purpose. The prayer had been disallowed by the trial court on the ground that effort was being made to prolong the trial for no good reason and the accused has failed to prove the existence of the recording of voice as he had not put the factum of recording in mobile phone when witness was earlier cross examined. The prayer was again rejected third time on 10.8.2015 by the trial court.

Against the order of 10.08.2015 the accused again travelled to the High Court. The High Court has allowed the prayer by the impugned order hence the complainant is before us.

Considering the fact that a similar prayer was made and had been declined twice by the trial court, and that the orders attained finality, no such third application was entertainable before the court as it was mis-use of the process of the law. For the same very purpose again the third application was moved which was rightly rejected by the trial court. The same prayer could not have been repeated. Thus we find the High Court ought not to have entertained the fresh misc. case at the instance of the accused. Thus, we set aside the impugned order passed by the High Court and restore that of the trial court. Trial court is directed to decide the case expeditiously.

The appeal is allowed.

.....J.
(ARUN MISHRA)

.....J.
(AMITAVA ROY)

NEW DELHI;
JULY 07, 2017