

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.41038 of 2014

Date of decision: 12th March, 2015

Samrendar Sharma

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. R.S. Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate and
Mr. Karan Pathak, Advocate
for the petitioner.

Mr. C.S. Brar, Dy. Advocate General, Punjab.

FATEH DEEP SINGH, J.

The petitioner Samrendar Sharma in this petition under Section 482 Cr.P.C. is seeking quashing of the orders dated 19.05.2014 (Annexure P7) when examined as a cited prosecution witnesses in a criminal case got registered by way of FIR No.62 dated 06.04.2006 at Police Station Division No.1, Pathankot under Sections 420/467/468/ 471/120-B IPC.

During the course of trial of the case the petitioner was examined as PW3. It is during the course of trial when the matter was fixed for evidence of the defence an application under Section 319 Cr.P.C. was moved on behalf of the accused for summoning the

petitioner Samrendar Sharma as an additional accused. The Court of learned Chief Judicial Magistrate, Pathankot through orders dated 19.05.2014 summoned him as an additional accused and the Court of learned Sessions Judge, Pathankot through its order dated 01.11.2014 passed on the revision petition filed by Samrendar Sharma dismissed the revision upholding the orders of the trial Court.

Thus, the only short point involved in this matter in the light of arguments of the two sides is over the fact that if this witness who has voluntarily stepped into the witness box on behalf of the prosecution and stated the truth can be hauled up as an accused in the same very case. Mr. C.S. Brar, Deputy Advocate General, Punjab representing the State has not much to resist the arguments of the other side in the light of the prosecution stand earlier taken before the trial Court.

The Hon'ble Supreme Court in the light of arguments of Mr. R.S. Rai, Senior Advocate assisted by Mr. Gautam Dutt, Advocate and Mr. Karan Pathak, Advocate on behalf of the petitioner interpreting the provisions of Section 132 of the Indian Evidence Act, 1872 in the case of '**State (Delhi Administration) v. Jagjit Singh**' **1989(1) RCR (Criminal) 282** has laid down the proposition as follows:

"A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceedings, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any

kind. Proviso – Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.”

In a similar situation in '**M.P. Gangadharan v. State S.I. of Police**' **1989 CriLJ 2455**, a Division Bench view of Hon'ble Kerala High Court while relying upon **State (Delhi Administration) v. Jagjit Singh's case (ibid)** have held that the protection envisaged under Section 132 of the Evidence Act protects such a witness and his statement cannot be used as an evidence against him. Though reliance is sought to be placed on '**Lajpat Rai v. State of Haryana**' **2002(1) RCR (Criminal) 280** in the impugned order, however, the Single Bench view of this Court is factually on a different footing.

The provisions of Section 132 of the Evidence Act have been brought about as a protection measure for a witness who would not hesitate to even answer self incriminating questions. In an earlier view of Hon'ble Apex Court in the case of '**Laxmipat Chorasias v. State of Maharashtra**' **AIR 1968 SC 938**, it was laid down that a witness when compelled to answer even on incriminating question does not expose him to prosecution except for perjury. If it is allowed would be contrary to the traditions of justice in Criminal Courts. Since this PW3, the present petitioner the only star witness of the prosecution has been by such implied compulsion in the capacity of a prosecution witness has been forced to state the truth and such has

assisted the Court in unraveling the truth so the protection under Section 132 of the Evidence Act cannot be denied to him.

In the light of this innocuous situation that is sought to be created by the defence to thwart the material witness of the prosecution with an oblique motive to frustrate the endeavour of the prosecution for a successful prosecution cannot be allowed to achieve its object. The impugned order certainly is bad in law and consequently all incidental proceedings arising out of it including orders dated 01.11.2014 (Annexure P9) passed in the revision petition followed by framing of chargesheet through orders dated 17.09.2014 (Annexure P10) stands quashed and the instant petition stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

March 12, 2015
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