

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1677-2013

Date of decision: 01.10.2015

Kamruddin

... Petitioner

Vs.

State of Haryana and anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sarfraj Hussain, Advocate
for the petitioner.

Mr. Manoj Kumar Sangwan, DAG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Present criminal revision petition is directed against the order dated 02.05.2013 passed by the learned trial Judge, whereby application of the petitioner under Section 319 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeking to summon respondent No.2 to face the criminal trial as an additional accused, was dismissed.

Notice of motion was issued.

Learned counsel for the petitioner submits that from the evidence available on record, a prima facie case was made out against the

accused-respondent which was sufficient for summoning him as an additional accused to face the criminal trial. However, since the learned trial Court failed to appreciate the evidence available on record, while passing the impugned order, the same has resulted in miscarriage of justice. He also places reliance on the judgment of this Court in **Arshida Vs. State of Haryana and others, 2014 (1) R.C.R. (Crl.) 946**, in support of his contentions. Learned counsel for the petitioner prays for setting aside the impugned order, by allowing the present petition.

On the other hand, learned counsel for the State submits that since during pendency of the present petition, trial itself has been concluded and one of the accused has already been convicted, present petition has been rendered infructuous and the same may be disposed of, as such.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the fact situation of the present case, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the impugned order dated 02.05.2013 passed by the learned trial Judge would show that he did not find even a prima facie case against the respondent-accused, for summoning him with the aid of Section 319 Cr.P.C. to face the criminal trial, as an additional accused. Each

and every relevant aspect of the matter was discussed in detail and cogent reasons were assigned by the learned trial Court, before arriving at its judicious conclusion. Having said that, this Court feels no hesitation to conclude that the learned trial Court has committed no error of law, while passing the impugned order and the same deserves to be upheld.

During the pendency of the present petition, the controversy involved in the case has been set at rest by the Hon'ble Supreme Court in its latest Constitution Bench judgment in the case of **Hardeep Singh Vs. State of Punjab and others, 2014 (3) SCC 92**. Para 99 of the judgment in **Hardeep Singh's** case (supra) laying down the ratio of judgment, which can be gainfully followed in the present case, reads as under:-

“Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if ‘it appears from the evidence that any person not being the accused has committed any offence’ is clear from the words “for which such person could be tried together with the

accused.” The words used are not ‘for which such person could be convicted’. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused.”

Coming to the judgment relied upon by learned counsel for the petitioner in **Arshida's** case (supra), there is no dispute about the law laid down therein. However, on close perusal of the cited judgment, the same has not been found of any help to the petitioner, being distinguishable on facts. The impugned order passed by the learned trial Court has been found in consonance with the law laid down by the Hon'ble Supreme Court in **Hardeep Singh's** case (supra). Further, it is the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of one additional fact or circumstance can make a world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in **Hardeep Singh's** case (supra), it is unhesitatingly held that the learned trial Judge did not exceed his jurisdiction, while passing the impugned order and the same deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case

noted above, coupled with the reasons aforementioned, this Court is of the considered view that instant petition has been found to be wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

01.10.2015
vishnu