

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3054-2013

Date of decision: 12.05.2015

Anoop Singh

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rahul Rathore, Advocate
for the petitioner.

Mr. Manoj Kumar Sangwan, DAG, Haryana.

Mr. A.K. Khubbar, Advocate
for respondent No.2.

Mr. Nitin Bhardwaj, Advocate
for respondent No.3.

Mr. Jagjeet Beniwal, Advocate
for respondent No.4.

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 07.08.2013 passed by learned Addl. Sessions Judge, Karnal under

Section 319 of Code of Criminal Procedure ('Cr.P.C.' for short), whereby respondents No.2 to 4 were refused to be summoned as additional accused, to face the trial in FIR No.172 dated 20.06.2012 under Sections 302, 34, 120-B of the Indian Penal Code ('IPC' for short), registered at Police Station Madhuban, District Karnal.

Learned counsel for the petitioner submits that respondents No.2 to 4 were named in the FIR. He submits that although there was no specific role, as such, attributed yet participation of the private respondents No.2 to 4, in the commission of crime cannot be ruled out. He further submits that the complainant-petitioner deposed before the Court exactly on similar lines, as he narrated before the police at the time of registration of FIR. He also successfully stood the acid test of cross-examination. However, since the learned trial Court misdirected itself, while passing the impugned order, it is not sustainable in law. He prays for allowing the present petition, by setting aside the impugned order.

On the other hand, learned counsel for the State submits that a scientific and effective investigation was conducted. Private respondents No. 2 to 4 namely Sachin son of Raj Kanwar, Chandveer son of Rajbir and Smt. Anju wife of Amit Narwal, were found and declared innocent by the investigating agency. He further submits that since the private respondents No.2 to 4 were neither beneficiary nor found present at the time and place of occurrence, they had no role to play in the commission of crime because of which they were declared innocent.

Similarly, while endorsing the arguments raised by learned counsel for the State, learned counsel for private respondents No.2 to 4,

jointly submit that there was not even a prima facie evidence available on record against the private respondents. They were rightly declared innocent during the course of investigation. No additional evidence was brought on record by examination of PW1-complainant, so as to make out a case for summoning of the private respondents under Section 319 Cr.P.C., as the additional accused. They pray for dismissal of the present petition.

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 rival contentions raised, this Court is of the considered opinion that in the given 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. To say so, reasons are more than one, which are being recorded hereinafter.

A bare reading of the impugned order would show that the learned Sessions Judge has discussed each and every relevant detail before arriving at a judicious conclusion, holding that the mere statement of the complainant, ipso facto, cannot be made the basis for summoning of the persons under Section 319 Cr.P.C., as additional accused. Further, during the course of hearing, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality, apparent on the record of the case, to convince this Court to take a different view other than the one taken by the learned trial Court, while passing the impugned order and the same deserves to be upheld.

There is a clear shift in the law relating to the scope of Section 319 Cr.P.C. In its recent judgment, the Hon'ble Supreme Court in **Hardeep**

Singh Vs. State of Punjab and others, 2014 (3) SCC 92, has held that prima facie case is not enough for summoning any person under Section 319 Cr.P.C., as an additional accused. Now the requirement of law is that more than a prima facie case has to be established on the record of the case, to enable the learned trial Court for summoning the persons as additional accused, while exercising its powers under Section 319 Cr.P.C.

The relevant observations made by the Hon'ble Supreme Court in Para 99 of its judgment in Hardeep Singh's case (supra), which can be gainfully followed in the present case, read 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.”

When a pointed question was put to learned counsel for the petitioner, about the law laid down by the Hon'ble Supreme Court in Hardeep Singh's case (supra), as to how the case of the petitioner satisfies the requirement of law laid down by the Hon'ble Supreme Court, he had no answer and rightly so because it is a matter of record. Having said that, this Court feels no hesitation to conclude that the learned trial Court committed no error of law, while passing the impugned order and 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 present revision petition is 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, present criminal revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

12.05.2015
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