

CRR No. 319 of 2013

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

CRR No. 319 of 2013

Date of decision : 2nd March, 2015

Anil

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present:- Mr. J.S.Bedi, Sr. Advocate
with Ms. Divya Sodhi, Advocate
for the appellant.

Mr. Mr. Kartar Singh, DAG, Haryana.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

AMOL RATTAN SINGH, J.

This revision petition challenges the order of the learned Additional Sessions Judge, Bhiwani, dated 10.01.2013 framing a charge against the petitioner, in respect of an offence punishable under Section 202 of the IPC, on account of him and his co-accused Rajesh having intentionally omitted to give information with regard to the commission of an offence punishable under Section 302 IPC, for which the other co-accused, Bijender, was charged by the same order of the learned trial

Court.

2. The facts of the case have a rather checkered history, inasmuch as, the complainant, Krishan Kumar, resident of village Thilod, initially is stated to have made a statement to the police, on 27.06.2011, at Police Station Tosham, District Bhiwani, with regard to the death of his brother, to the effect that his brother, though married with children, had a slightly weak mental condition but was a bread earner for his family, who used to go out of the house for many days a time. The statement further reads that he went out from the house on 25.06.2011 and that on the day of the statement (27.06.2011), in the morning, Bijender son of Duli Chand, also resident of Thilod, told them that the dead body of a young person is lying in the well situated in the fields, after which he (Krishan Kumar) and his brother Inderjeet and the Sarpanch of the village, along with other people, went to the well and identified the body to be that of Kamal.

The statement further reads to state that Kamal had died due to mental disturbance, after falling into the well and after having received injuries from the motor installed in the well and that “we have no doubt of any type on any person”, and that no action was required to be taken against anybody.

[**Note:-** The above statement has been reproduced in the grounds of revision filed with the petition and was pointed to by Mr. Bedi, learned Senior Counsel appearing for the appellant, though, erroneously, in the said grounds of revision, the statement is shown to be the contents of FIR No. 242 dated 23.09.2011, registered at Police Station Tosham, with regard to the commission of an offence punishable under Sections 302, 201,

202/34 IPC. Obviously, since the FIR is dated 23.09.2011 and the statement referred to above was initially made by Krishan Kumar on 27.06.2011, the FIR was not registered on the basis of that statement, which in any case does not make out the above said offences. The FIR was actually registered on the basis of the subsequent application made by Krishan Kumar, referred to hereinafter.]

On 23.09.2011, Krishan Kumar filed an application (though stated to be dated 07.07.2011), also at Police Station Tosham, seeking registration of a case for the murder of his brother, Kamal, against Mahender son of Bhartu, Anil son of Rajender (not the petitioner), both residents of village Thilod, District Bhiwani, Haryana, and Kuldeep son of Sombir, resident of village Lutana, Rajasthan. As per the said application, which formed the basis of FIR No. 242 dated 23.09.2011, the murder was committed because of an earlier dispute on the issue of a common boundary allegedly damaged by Kamal, on account of which he (Kamal) entangled with the wife and daughter of accused Mahender.

The dispute is stated to have been resolved on the intervention of respectables but, allegedly, Mahender kept nursing a grudge and on 25.06.2011, when Kamal went to attend the marriage of the daughter of Mange Ram (Brahmin), he did not come back.

Thereafter, on 27.06.2011, Bijender son of Duli Chand, also resident of village Thilod, came and told the complainant and his family that a dead body of a young man was lying in the well situated in his field, upon which the complainant and others went there and identified it to be that of Kamal (as given in the earlier statement also).

The police having been informed and having reached there, pull out the dead body, which was sent for postmortem examination, after which it was handed over to the family and cremated (on the statement of Krishan Kumar having been recorded on 27.06.2011, not casting a doubt on anybody).

As per the application thereafter filed by the complainant (on 23.09.2011), upon the family further enquiring, one Sanjay son of Suresh and Karambir son of Mahipal, residents of same village Thilod, told the complainant that on the night of 25.06.2011, when they had also gone to attend the marriage where Kamal had gone, Mahender son of Bhartu and Anil son of Rajender (not the petitioner) were also present and were talking to Kamal at 10/10:30 P.M., and that a pick up vehicle came there, driven by Kuldeep son of Sombir, who spoke for some time with Mahender, Anil and Kamal, after which all four went towards the village, in the vehicle.

The complainant, therefore, expressed the suspicion that since Kamal was last seen with Mahender, Anil (not the petitioner) and Kuldeep and thereafter his dead body was recovered on 27.06.2011, and further, since there were several injuries on his body, he suspected that he had been murdered by the aforesaid three persons.

3. The FIR having been registered and investigation conducted, all three aforesaid persons are stated to have been arrested on 27.10.2011 and thereafter subjected to a "lie detector test", upon which a negative report was submitted by the laboratory on 30.01.2012. Hence, they were "got discharged from the Court" (as per the report under Section 173 Cr.P.C., dated 06.06.2012 - Annexure P-2).

Upon further investigation having been conducted, Bijender, son of Duli Chand, who had given information to the complainant with regard to Kamals' body being in the well near his field, was also subjected to a lie detector test on 24.02.2012 and upon receipt of the result of the test, he was further associated with the investigation and arrested on 20.04.2012, after which he (Bijender) is stated to have confessed that he was a habitual drunkard and that Kamal was also a drunkard who used to frequently drink with him.

As per the alleged extra judicial confession of Bijender, on 26.06.2011, he and one Partap consumed liquor together. Thereafter, when he (Bijender) was going to the well, Kamal met him and they both went to the tubewell in the field after purchasing a bottle of liquor from the Bus Stand at Thilod.

Further, as per the alleged confession, they consumed liquor and got intoxicated, after which Kamal started abusing Bijender and in the altercation which then took place between them, he slapped and punched Kamal and eventually pushed him, consequent upon which Kamal fell into the well.

Bijender is then stated to have rung up his brother-in-law, Rajesh, out of fear, who told him that he would speak to him after a while and upon Rajesh calling him back he is stated to have told Bijender that though he had committed a wrong, he should not tell anyone about it as yet, but in the morning should say that someone is lying in the well. Therefore, Bijender is stated to have told people in the village, on the next morning, that some person was lying in the well.

The above confession is stated to have been made by Bijender to one Pardeep Kumar.

4. The matter having been further probed into and investigated, an offence under Section 202 IPC was added, on account of Rajesh not having disclosed what he allegedly knew, i.e. about the death of Kamal having occurred at the hands of Bijender. Upon Rajesh's arrest on 31.05.2012 and further investigation, (as per the reply filed to the petition on behalf of the respondent-State) the complainant, Krishan Kumar, again had his statement recorded on 17.07.2012, that on 26.06.2011, after Bijender informed his brother-in-law, Rajesh, regarding the murder of Kamal, on his mobile phone, Rajesh, in turn, informed his nephew Anil (the petitioner), of the incident, on the petitioners' mobile phone number (given in the reply).

Consequently, the petitioner is stated to have been arrested on 17.07.2012 and eventually a report under Section 173 Cr.P.C. presented against him on 20.10.2012, leading to the charge being framed against him, vide the order presently impugned in this petition.

5. Mr. J.S.Bedi, learned Senior Advocate appearing for the petitioner, firstly submitted that the charge against the petitioner has been framed only on the basis of hearsay evidence, inasmuch as, Bijender is stated to have made the extra judicial confession to Pardeep, that after having pushed Kamal into the well, he had spoken to his brother-in-law and thereafter, the complainant is stated to have informed the police that Rajesh spoke to his nephew, i.e. the petitioner, about the incident.

Upon query, Mr. Bedi submitted that even if the phone record of a conversation between Rajesh and the petitioner is presumed to be

correct, (though not admitted), the fact remains that Rajesh is the maternal uncle of the petitioner and as such, with the alleged conversation between them not having been recorded, it cannot be inferred that it was with regard to any murder but was, in fact, a normal conversation between uncle and nephew.

Mr. Bedi referred to the two reports under Section 173 Cr.P.C. (Annexures P2 and P3), to submit that, admittedly, other than the above, there is no evidence at all against the petitioner.

He further submitted that the statement of Krishan, even as per the reply of the respondent-State, was recorded on 17.07.2012, with regard to the conversation between the petitioner and his uncle (Rajesh), which is more than 1 year after the occurrence of the death of Kamal.

He, therefore, submitted that as the petitioner has only been charged for the commission of an offence punishable under Section 202 of IPC on the basis of an alleged telephonic conversation stated to have taken place between him and his uncle, the charge against him deserves to be quashed.

6. Mr. Kartar Singh, learned Deputy Advocate General, Haryana, on the other hand, submitted that in view of the fact that, as per call records, the petitioner is shown to have had a conversation with Rajesh at the relevant time, i.e. soon after Bijender is stated to have spoken to Rajesh about the death of Kamal having occurred, on account of the fight between them, it shows that the conversation between Rajesh and the petitioner was actually with regard to the offence having been committed by Kamal.

He, therefore, prayed for dismissal of the petition.

7. Having considered arguments of both learned counsel and having gone through the pleadings and the record before this Court, I do not find this to be a case where the charge framed by the learned trial Court against the petitioner, for an offence punishable under Section 202 IPC, should be quashed.

8. No doubt, learned Senior counsel has made a pertinent contention that simply because there is an allegation of a telephonic conversation between an uncle and his nephew, by the complainant, it cannot be looked at with suspicion, especially one year after the occurrence; however, this Court cannot lose sight of the fact that the petitioner is a Head Constable in the Haryana Police and if the timing of the call record between the petitioner and his uncle, Rajesh, co-incides with the telephonic conversation between Rajesh and Bijender, then the learned trial court was very much justified in having a grave suspicion that the conversation between the petitioner and Rajesh was to ask some advice which may have been sought by Rajesh, as to what Bijender should do in the circumstances. Though this ground (of the suspicion in the mind of the trial Court being existent because of the petitioner being a Head Constable), is not stated in the impugned order, however, at the stage of framing of charge, the trial Court is not required to give detailed reasons, as opposed to when it is discharging an accused. Since the order of discharge is a final adjudication by the trial Court, qua the allegations against a particular accused, that Court is required to give detailed reasons for such discharge. However that is not so at the time of framing of charge, when only the basic ground for “grave suspicion” is to be given. What that Court has stated in its order

dated 10.01.2013, is that, in the circumstances, grave suspicion did arise and that it was not for the trial Court to see at the stage of framing charge whether conviction would be warranted or not at the time of final disposal of the case but what was to be seen, was whether a prima facie case was made out or not for framing the charge against the accused and that a grave suspicion towards such prima facie opinion did exist.

9. Obviously, if the said charge is eventually proved, the petitioner would be guilty of intentionally omitting to give information of an offence having been committed, which information he would otherwise be bound to disclose, a very serious offence having been committed. Whether or not, in the entire circumstances, the charge against the petitioner, or even the charges against his other co-accused, is/are eventually proved or not, on the basis of evidence led before the trial Court, is something which is absolutely dependent on the evidence to be led before that Court; however, I see no error of jurisdiction or in law in the trial Court having framed a charge against the petitioner under Section 202 of IPC, on a grave suspicion that such offence has been committed by him.

This Court is obviously aware of the sequence of events as given in this petition, with regard to the complainant 1st having made a statement not casting a doubt on anybody with regard to death of his brother, then of his application casting a doubt on three persons and thereafter the findings of the police, against the prime accused, Bijender, against whom a charge under Section 302 IPC has been framed and thereafter Rajesh and the petitioner having been implicated in the police report, with regard to an offence punishable under Section 202 of the IPC.

However, once, after detailed investigation, a report under Section 173 Cr.P.C. has been submitted against all the three aforesaid persons, and the trial Court has formed a prima facie opinion leading to framing of a charge, the contention of the learned Senior Counsel, that the charge against the petitioner is liable to be quashed also because of the checkered history of the case, (in addition to it being based on hearsay), does not appeal to reason in the circumstances, especially as the allegation of a conversation between the petitioner and his co-accused, Rajesh, is stated to be on the basis of telephone call records. However, this fact is being mentioned even at this stage, only because the issue is whether or not the petitioner can be charged for having committed an offence punishable under Section 202 IPC on hearsay evidence, whereas, at least in the reply filed by the State, mobile numbers are also given.

Still, it is made clear that the observation of this Court with regard to any such conversation having taken place (or not), is only a comment in the light of pleadings and arguments addressed on both sides before this Court, on the question of framing of the charge; whether or not the prosecution or defence can prove/disprove the factum of such conversation or the contents etc. thereof, is something which is not even remotely being commented upon by this Court and would be a matter to be decided by the trial Court, at the time of appreciation of all evidence led.

10. Keeping in view all that has been discussed above, this petition is dismissed and the interim order of this Court dated 22.02.2013, directing that further proceedings qua the petitioner shall remain stayed before the trial Court, is vacated.

11. However, to repeat, nothing stated hereinabove will be construed by the trial Court to be a comment by this Court upon the merits of the charges against any of the accused, but only comments made for the purpose of adjudication on the question of the charge having been correctly or erroneously framed, against the petitioner.

2nd March, 2015
amit rana

(AMOL RATTAN SINGH)
JUDGE