

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-351-2013 (O&M)
Date of Decision: October 16, 2015

Sandeep and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Gautam Dutt, Advocate,
for the petitioners.

Mr. Pawan Gaur, DAG, Haryana,
for respondent No. 1.

Mr. Bikram Chaudhary, Advocate,
for respondent No. 2.

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| 1. | <i>Whether Reporters of local papers may be allowed to see the judgment?</i> | <i>YES</i> |
| 2. | <i>To be referred to the Reporters or not?</i> | <i>YES</i> |
| 3. | <i>Whether the judgment should be reported in the Digest?</i> | <i>YES</i> |

NARESH KUMAR SANGHI, J (Oral)

Challenge in this criminal revision petition is to the order dated 14.1.2013, passed by learned Additional Sessions Judge, Faridabad, whereby the application, under Section 319, Cr.P.C., moved by the prosecution for summoning of the petitioners as additional accused was allowed.

Mr. Gautam Dutt, learned counsel for the petitioners

submits that during investigation the petitioners were found innocent and, as such, the charge-sheet (challan) was presented for prosecution of Badan Singh son of Harpal Singh, co-accused of the petitioners, for the offence punishable under Section 306, IPC. He further points out that though initially the FIR was registered for the offences punishable under Sections 302 and 306, IPC, but finding no evidence to connect the accused with the offence punishable under Section 302, IPC, the investigating agency proposed to file the charge-sheet (challan) for prosecution of the accused for the offence punishable under Section 306, IPC, only. He also points out that after scanning the material available on record, learned Magistrate committed the case to the Court of Session for prosecution of the accused for the offence punishable under Section 306, IPC. He also points out that even learned Trial Court finding *prima facie* case for commission of the offence punishable under Section 306, IPC, framed the charge against Badan Singh. He further points out that while passing the impugned order, learned Trial Court failed to specify as to what offence has been committed by the petitioners and as a matter of routine, all the petitioners have been summoned to face trial for the offences punishable under Sections 302 and 306, IPC. He also points out that summoning of

a person to face trial for the offences punishable under Sections 302 and 306, IPC, is a serious matter and it may jeopardize his liberty. To summon a particular person to face trial, without specifying the offence, is bad in law. He further points out that from the material available on record, no case for summoning of the petitioners for the offences punishable under Sections 302 and 306, IPC, is made out.

Learned counsel for the State has very fairly conceded that the charge-sheet (challan) for the prosecution of Badan Singh for the offence punishable under Section 306, IPC, was presented. The petitioners were declared innocent since no material was found to connect them with the offences punishable under Sections 302 and 306, IPC. He further fairly concedes that the charge for the offence punishable under Section 306, IPC, was framed by learned Trial Court for prosecution of Badan Singh, co-accused of the petitioners. However he submits that during trial sufficient material has emerged to summon the petitioners for the offences punishable under Section 306, IPC.

Learned counsel for respondent No. 2/informant, has also adopted the arguments submitted by learned counsel for the State.

After hearing learned counsel for the parties, this

Court finds that while passing the order of summoning, learned Trial Court has failed to specify the specific offence/sections for which the petitioners have to face trial. At the conclusion of the impugned order, learned Court below has held as under:-

“8. Consequent to afore said discussion, I am of the view that application u/s 319 Cr.P.C. moved by the prosecution deserves to be succeeded and the same is hereby allowed. As such accused Sandeep, Nikhil, Smt. Saroj and Hemant are ordered to be summoned to face trial with accused Badan Singh under sections 302/306 IPC. The application is disposed of accordingly.”

Perusal of the material shows that at this stage, there is no evidence to connect the petitioners with the offence punishable under Section 302, IPC. However, there is sufficient material to connect the petitioners for the offence punishable under Section 306, IPC.

In the matter of **Hardeep Singh v. State of Punjab**, **2014 (1) R.C.R. (Criminal) 623**, Hon'ble the Supreme Court held that for summoning of additional accused, under Section 319, Cr.P.C., the Court has to search for the material which is more than *prima facie* and might be less than the material required for holding a person guilty.

This Court finds that there is sufficient material to summon the petitioners to face trial for the offence punishable under Section 306, IPC. As such, the impugned order to the extent of summoning of the petitioners for the offence punishable under Section 302, IPC, is set aside while their summoning for the offence punishable under Section 306, IPC, is upheld.

With the above modification in the impugned order, the present criminal revision petition is disposed of.

(NARESH KUMAR SANGHI)
JUDGE

October 16, 2015
Pkapoor