

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No. 1047 of 2015

Date of Decision : December 08, 2015

Vikash

.....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM

Present : Mr. S.K. Chauhan, Advocate
for the petitioner.

Mr. Praveen Bhadu, Assistant Advocate General, Haryana
for respondent No.1-State.

Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep S. Sandhu, Advocate
for respondent No.2.

T.P.S. MANN, J.

Complainant-Vikash has filed the present revision under Section 401 Cr.P.C. for challenging the order dated 10.9.2014 passed by learned Additional Sessions Judge, Bhiwani whereby application filed by the prosecution under Section 319 of the Code of Criminal Procedure for summoning respondent No.2-Shiv Narayan as an additional accused stands dismissed.

The facts leading to the filing of the present revision are that on 2.3.2014 Ravinder @ Chintu, brother of the petitioner, was

allegedly assaulted by respondent No.2-Shiv Narayan and six others, namely, Kamal Singh, Sandeep, Naresh Kumar, Attar Singh, Vijender Kumar and Kedar Singh. During the investigation of the case, Shiv Narayan was found innocent and his name was mentioned in column No.2 of the report under Section 173 Cr.P.C. and simultaneously, all the remaining six accused were challaned. After the framing of the charges against the six co-accused of Shiv Narayan, the prosecution examined Anil Kumar, who had witnessed the occurrence, as PW1. During his examination-in-chief, said Anil Kumar testified that Ravinder @ Chintu was assaulted by all the seven accused, including Shiv Narayan. The prosecution then moved an application under Section 319 of the Code of Criminal Procedure for summoning Shiv Narayan as an additional accused. The said application was, however, dismissed by the trial Court vide impugned order dated 10.9.2014. The petitioner challenged the order dated 10.9.2014 by filing revision (CRR No.3476 of 2014) but the same was dismissed as withdrawn on 11.11.2014 with liberty to the petitioner to file afresh if some more evidence was brought on record to indict Shiv Narayan. Subsequent thereto, PW1 Anil Kumar was cross-examined by the accused, who stood challaned. The prosecution also examined a number of witnesses, including the petitioner, who appeared as PW4. He then filed the present revision with the prayer that the impugned order be set aside and the application filed by the prosecution under Section 319 Cr.P.C. be accepted by summoning Shiv Narayan as an

additional accused.

Learned counsel for the petitioner has submitted that sufficient oral and documentary evidence has come on the record which shows involvement of Shiv Narayan also in the commission of the crime but the police had twisted the facts and circumstances of the case as a result of which, Shiv Narayan, who is real culprit, got away. He has further submitted that when the application was filed by the prosecution under Section 319 cr.P.C. before the trial Court, there was only the statement of PW1 Anil Kumar made before the trial Court, which was available on the record. Subsequent thereto, the prosecution has examined a number of witnesses, including the petitioner as PW4 and in his testimony the petitioner has fully supported the prosecution case, including the involvement of Shiv Narayan also as an accused in the case. Therefore, impugned order dated 10.9.2014 passed by the trial Court be set aside.

Per contra, learned counsel for respondent No.2-Shiv Narayan has submitted that against the impugned order the petitioner had filed Criminal Revision No.3476 of 2014 and the said revision petition has already been withdrawn by the petitioner and resultantly, the said revision stood disposed of on 11.11.2014 as having been withdrawn. Therefore, the petitioner cannot file the present revision for the relief which he had earlier sought by filing Criminal Revision No.3476 of 2014.

Having heard learned counsel for the parties, this Court finds that in the FIR, registered at the instance of the petitioner, it was mentioned that on 2.3.2014 at about 7.00 p.m., Ravinder @ Chintu went with Sandeep for recovering freight/rent of the tractor but had not returned home. Accordingly, FIR came to be registered for the offence under Section 346 IPC. During the investigation of the case, the petitioner made supplementary statement to the effect that Anil Kumar son of Ram Karan, resident of village Fatehgarh told him that on 2.3.2014 he had seen the seven accused, including Shiv Narayan giving beatings to Ravinder @ Chintu. At the conclusion of the investigation, the police found Shiv Narayan to be innocent and, accordingly, his name was placed in column No.2 of the challan, whereas the remaining six accused were put up for trial. At the trial, Anil Kumar appeared as PW1 and testified that on 2.3.2014, while he was returning from his village, he saw Ravinder @ Chintu being given beatings by all the seven accused, including Shiv Narayan. The prosecution then moved application under Section 319 Cr.P.C. for summoning Shiv Narayan as an additional accused. The said application came to be dismissed by the trial Court on 10.9.2014 on the ground that no sufficient evidence had been brought on record by the complainant to arrive at the satisfaction that there were reasonable prospects of conviction of Shiv Narayan, who was sought to be summoned as an additional accused, especially when the complainant himself had not appeared in the witness-box and PW1

Anil Kumar had made contrary statement before the police as well as before the Court. It was also observed that the powers conferred on the Court under Section 319 Cr.P.C. were to be used very sparingly and mere existence of prima facie case against the accused would not fulfill the requirement of higher standard set up for the purpose of invoking jurisdiction under Section 319 Cr.P.C. It was also observed that merely because Shiv Narayan had been named as accused in the FIR and also in the statement under Section 161 Cr.P.C. and, thereafter, before the trial Court by the prosecution witness, namely, PW1 Anil Kumar and some involvement of his in the commission of offence was shown, would not give jurisdiction to the trial Court to invoke its powers under Section 319 Cr.P.C.

Aggrieved of the order dated 10.9.2014 passed by the trial Court, the petitioner filed Criminal Revision No.3476 of 2014. Vide order dated 11.11.2014, a co-ordinate Bench of this Court permitted the petitioner to withdraw the revision with liberty to file afresh, in case more evidence was brought on the record to indict Shiv Narayan.

Subsequent to the disposal of the revision petition on 11.11.2014 as having been withdrawn, PW1 Anil Kumar was recalled for further examination-in-chief and, thereafter, cross-examined by the counsel for the accused on 23.1.2005. The petitioner has also been examined before the trial Court as PW4. Dr. Sandeep, Medical Officer, CHC, Mangali, who had conducted post-mortem on the dead

body of Ravinder @ Chintu has also been examined by the prosecution as PW9. Pleading that the prosecution has brought sufficient material on the record to show the involvement of Shiv Narayan as an accused in the case, the petitioner filed the present revision.

According to the petitioner, he has already brought on record enough evidence to establish the involvement of Shiv Narayan as an accused in the present case. However, the said material need not be considered by this Court in view of the fact that the petitioner had already been granted the liberty to apply afresh for summoning of Shiv Narayan as an additional accused. Under these circumstances, it will be open to the petitioner to file a fresh application under Section 319 Cr.P.C. before the trial Court and to make out a case for summoning Shiv Narayan as an additional accused. Needless to say that in the event of the petitioner filing fresh application under Section 319 Cr.P.C. before the trial Court, the trial Court will be required to make fresh consideration by referring to the evidence/material available on the record to decide as to whether Shiv Narayan be summoned as an additional accused or not.

Resultantly, the petition is disposed of by permitting the petitioner to move fresh application under Section 319 Cr.P.C. before the trial Court for summoning Shiv Narayan as an additional accused. In the event of such an application being filed, the trial Court shall

make fresh consideration of the material/evidence available on the file to decide the question as to whether Shiv Narayan is to be summoned as an additional accused or not.

Nothing stated above shall be construed as an expression on the merits of the case.

**(T.P.S. MANN)
JUDGE**

December 08, 2015
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**(GURMIT RAM)
JUDGE**