

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3988-2013 (O&M)
Date of decision: 08.09.2015

Raj Kumar

... Petitioner

Vs.

Rohit @ Rohtash and ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Vivek Khatri, Advocate
for the petitioner.

Mr. Rajender Helwa, Advocate for
Mr. Aman Pal, Advocate
for respondents No.1, 2, 4, 6 & 13.

Ms. Vandana Sharma, Advocate
for respondent No.14.

Mr. Ashish Yadav, Addl. AG, 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.

Feeling aggrieved against the impugned order dated 22.11.2013 passed by learned trial Court, dismissing the application of the petitioner under Section 319 of the Code of Criminal Procedure ('Cr.P.C.' for short), he approached this Court by way of instant criminal revision petition.

Notice of motion was issued.

Learned counsel for the petitioner submits that statements of the witnesses levelling serious allegations against persons sought to be summoned with the aid of Section 319 Cr.P.C., were recorded. However, the learned trial Court has misdirected itself, while passing the impugned order making patently illegal observations contrary to the law laid down by the Hon'ble Supreme Court in its Constitution Bench judgment in **Hardeep Singh Vs. State of Punjab and ors., 2014 (3) SCC 92**. He submits that sufficient evidence for conviction was not the requirement for summoning a person as additional accused to face the criminal trial with the aid of Section 319 Cr.P.C. Referring to another observation made by learned trial Court in para 7 of the impugned order, he submits that if some PWs already examined, were to be re-examined again, after summoning the additional accused, that would not be a ground for dismissing the application under Section 319 Cr.P.C. He prays for setting aside the impugned order, by allowing the present petition.

On the other hand, learned counsel for the State as well as learned counsel for the private respondents-accused submit that the learned trial Court proceeded on a factually correct and legally justified approach, while passing the impugned order. Petitioner has tried to implicate maximum number of persons from the side of the accused party. There were no direct and specific allegations levelled against each of the accused in the FIR. Allegations levelled by the petitioner were general in nature. They further submit that although the impugned order is not happily worded on each and every relevant aspect of the matter, yet in substance the same is legally justified and deserves to be upheld. 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 contentions raised, this Court is of the considered opinion that the impugned order cannot be sustained as it is. It is so said because the reasons which have been pointed out by the learned trial Court, while passing the impugned order certainly run counter to the law laid down by the Hon'ble Supreme Court in its Constitution Bench judgment in **Hardeep Singh's** case (supra).

The observation made by the learned trial Court in penultimate para 9 of the impugned order is no more the requirement of law. The observation made by the learned trial Court that there exists no possibility that the accused so summoned in all likelihood would be convicted, is contrary to the law laid down by the Hon'ble Supreme Court in Hardeep Singh's case (supra), because it is no more the requirement of law. Similarly, if some PWs who have already been examined, were to be re-examined on behalf of the newly summoned accused with the aid of Section 319 Cr.P.C., would not be a ground for dismissing an application under Section 319 Cr.P.C. It is so said because that would be the natural course of action which has to take place after passing of an order under Section 319 Cr.P.C. Having said that, this Court feels no hesitation to conclude that the learned trial Court was not justified in dismissing the application of the petitioner under Section 319 Cr.P.C. on the basis of abovesaid reasons and the impugned order cannot be sustained, for this reason as well.

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 petition deserves to be accepted. Consequently, impugned order dated 22.11.2013 passed by learned Additional Sessions Judge, Palwal, is hereby set aside. The matter is remitted back to the learned trial Court to pass a fresh order on the application of the petitioner under Section 319 Cr.P.C., keeping in view the law laid down by the Hon'ble Supreme Court in its Constitution Bench judgment in Hardeep Singh's case (supra) as well as the observations made herein.

Let the appropriate order be passed by the learned trial Court at an early date.

Resultantly, with the abovesaid observations made and directions issued, present criminal revision petition stands allowed, however, with no orders as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

08.09.2015
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