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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1582-2014 [O&M]

Date of Decision : October 6th, 2015

Gurdas Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Ms. Raman Goklaney, Advocate,
for the petitioner.

Mr. A.S. Kler, DAG, Punjab,
for the respondent-State.

Mr. Rajesh Narang, Advocate,
for respondent Nos. 2 and 3.

Mr. Neeraj Madan, Advocate,
for respondent No. 4.

SHEKHER DHAWAN, J.

Present revision petition against the order dated 8.5.2014 [Annexure P/1] passed by Additional Sessions Judge, Fazilka whereby application under Section 319 Cr.P.C. for summoning of Mohan Singh, Rajinder Kaur and Jagir Kaur, respondents No. 2 to 4 herein, as additional accused was dismissed.

2. Relevant facts of the case, that an application under Section 319 Cr. P.C. was filed by the State for summoning of Mohan Singh, Rajinder Kaur and Jagir Kaur, respondents No. 2 to 4 herein, as additional accused mainly on the ground that Gurdas Singh while appearing as PW-3 before the Court below deposed against the above named three persons.

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3. As per Gurdas Singh, all the above named three persons in connivance with accused Ram Milan, abducted his daughter and took her to Railway Station, Fazilka. Ram Milan, accused in this case, was also called at Railway Station through mobile phone call. Thereafter all the above named three persons had sent the prosecutrix with Ram Milan by alluring her on the pretext of marriage.

4. Learned trial Judge, after considering the entire matter, dismissed the application vide order dated 8.5.2014 [Annexure P/1], which is impugned in this revision petition.

5. Learned counsel for the petitioner submitted that the trial Judge mainly relied upon the statement of the prosecutrix under Section 164 Cr.P.C., wherein she had not given the names of aforesaid three persons, but simply stated that she had met her three friends, out of which, two were girls and the one was boy. Learned trial Judge completely ignored the fact that it had come in the statement of Gurdas Singh, which was recorded during trial of the case on 28.04.2014 that Mohan Singh, Rajinder Kaur and Jagir Kaur were also involved and the offence was committed in connivance with them. The prosecutrix had also levelled specific allegations against the above named three persons who are to be arrayed as accused on the basis of application under Section 319 Cr.P.C. Merely saying that these persons were found innocent does not make out a case for dismissal of application under Section 319 Cr.P.C., because the power to summon as additional accused has been given to the Court which is to be exercised on the basis of investigation proceedings or any material evidence coming on the file during trial of the case. In support of his arguments, learned counsel for the petitioner has placed reliance on the

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decisions of Hon`ble Supreme Court of India in **Rajendra Singh Vs. State of U.P. & Anr.** 2007 (3) R.C.R. [Criminal], **Shashikant Singh Vs. Tarkeshwar Singh** 2002[3] R.C.R. [Criminal] 191; and **Babubhai Bhimabhai Bokhiria and another Vs. State of Gujarat and others** 2014(1) R.C.R. [Criminal] 542.

6. Learned counsel for the petitioner also submitted that statement under Section 164 Cr.P.C. alone cannot be made the basis to dismiss the application under Section 319 Cr.P.C. In support of his arguments, reliance was placed on **Dhanabal and another Vs. State of T.N.** 1980 AIR [SC] 628, wherein the Hon`ble Supreme Court of India has observed that even if the police had the statement under Section 164 Cr.P.C. recorded by the Magistrate, that in itself would not make the “evidence suspect”.

7. While arguing, learned counsel for the respondent submitted that learned trial Judge has rightly exercised the discretion vested in it. It was for the Court to consider whether or not any body else is to be summoned as an additional accused while deciding the application under Section 319 Cr.P.C. More so, this power is exercised in exceptional cases and not in routine manner. On this, reliance has been placed upon a decision of Hon`ble Supreme Court of India in **Rajendra Singh Vs. State of U.P. & Anr.** 2007[3] R.C.R. [Criminal] 1022.

8. Learned counsel for the respondent also submitted that since the trial against main accused, namely, Aadit Kumar @ Ram Milan, has already been concluded, vide judgment of conviction and order of sentence dated 22.5.2014, the present petition has become infructuous. On this point, reliance was placed on a decision of a Co-ordinate Bench of this Court in **Govind Singh Vs. State of Haryana and others,** CRR No. 142

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of 2014, decided on 16.10.2014. So, the present petition is not maintainable and be dismissed as such.

9. Having considered the matter in its entirety, the present revision petition is not maintainable in view of the fact that trial against the main accused, Ram Milan, has already been concluded vide judgment dated 22.5.2014.

10. More so, the power under Section 319 Cr.P.C. is to be exercised not in a routine manner, but the same is to be exercised sparingly or in exceptional circumstances. Learned trial Judge has rightly exercised its discretion in this case while passing the order under challenge. In the investigation conducted by Superintendent of Police, respondents No. 2 to 4 were found to be innocent. Prosecutrix had not named any of these persons in her statement recorded under Section 164 Cr.P.C., rather she has not levelled any allegation against these three persons. More so, in such like cases, the power to summon any body else as additional accused primarily rests with the trial Court and in the present case the trial Judge, to the best of his wisdom, decided not to summon respondents No. 2 to 4 as additional accused. The discretion exercised by learned trial Judge was based on reasoning given in the order dated 8.5.2014 [Annexure P/1]. The same does not call for any interference by this Court by way of the present revision petition and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

October 6th, 2015
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