

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-2915-2014
Date of decision:12.10.2015

Raj Kumar @ Kukki Bahari

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Present: Mr.Rajesh Khandelwal, Advocate for the petitioner.
Mr. Manoj Kumar Sangwan, DAG, Haryana.
Mr.Ashwani Bhardwaj, Advocate for respondent No.2.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 25.8.2014 passed by the learned trial Court, exercising its powers under Section 319 of Code of Criminal Procedure ('Cr.P.C.' for short), summoning the petitioner as an additional accused, he has approached this Court by way of criminal revision petition, for quashing of the impugned order.

Notice of motion was issued and operation of the impugned order was stayed.

Learned counsel for the petitioner submits that the learned trial Court has misdirected itself, while passing the impugned order, altogether ignoring the material fact that the complainant has been changing his stand from time to time, as per his suitability. He places heavy reliance on the supplementary statement of the complainant recorded by the investigating agency on 28.6.2013 at Annexure P-1, to contend that once the complainant has specifically stated that he named the petitioner due to misunderstanding

and thereafter petitioner was rightly declared innocent by the investigating agency, there was no scope of moving of an application under Section 319 Cr.P.C.. Since the learned trial Court has miserably failed to appreciate this crucial aspect of the matter, while passing the impugned judgment, the same has been resulted in miscarriage of justice. He prays for setting aside the impugned order, by allowing the present petition.

On the other hand, learned counsel for the complainant vehemently contended that the supplementary statement was recorded only by the police, to which he was not signatory. He further submits that since the petitioner was very much named in the FIR and it was clarified by the complainant, while appearing before the Court as PW-1, the learned trial Court has rightly passed the impugned order, summoning the petitioner to face the criminal trial as an additional accused. He prays for dismissal of the instant petition.

Learned counsel for the State submits that the complainant got recorded his supplementary statement, which was made the basis for declaring the petitioner as innocent. Thereafter, complainant never moved any application or complaint in this regard, even after filing the report under Section 173 (2) Cr.P.C., that his supplementary statement was incorrectly recorded. He also prays for disposal 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 keeping in view the peculiar facts and circumstances of the case noticed hereinabove, instant petition deserves to be allowed, for the following more than one reasons.

A bare reading of the impugned order would show that the learned trial Court has exceeded its jurisdiction, while passing the impugned order. It is so said, because the impugned order clearly runs counter to the law laid down by the Hon'ble Supreme Court in **Hardeep Singh v. State of Punjab & others, 2014 (1) RCR (Crl.) 623**. The learned trial Court has failed to appreciate one of the very material aspects of the matter that the complainant was changing his stand from time to time, as per his suitability.

Such a person would not be reliable. Further, it is also not disputed on record that even if his supplementary statement recorded by the investigating agency was not being owned by the complainant, he never raised any protest by moving any complaint either before the higher police authorities or even before the Court after filing of the challan. In this view of the matter, it can be safely concluded that complainant was trying to misuse the process of court and the impugned summoning order cannot be sustained, for this reason also.

The relevant observations made by the Hon'ble Supreme Court in para 99 of its judgment in **Hardeep Singh's case (supra)**, which can be gainfully followed in the present case, read as under:-

“Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of

such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

Had there been any substance in the contention raised by the learned counsel for the complainant that supplementary statement of the complainant at Annexure P-1 was incorrectly recorded by the investigating officer, nobody stopped the complainant from moving appropriate representation before the higher police authorities. However, he kept conveniently silent for the reasons best known to him. In such a situation, complainant cannot be permitted to take a complete somersault at a later point of time, saying that his supplementary statement was incorrectly recorded by the investigating agency.

Further, in view of the law laid down by the Hon'ble Supreme Court in **Hardeep Singh's case (supra)**, it is more than a prima facie case, which is the requirement of law, enabling the learned trial Court to exercise its powers under Section 319 Cr.P.C. Only a prima facie case, as for the purpose of summoning or framing of charge, is no more sufficient to exercise the powers under Section 319 Cr.P.C. So far as the present case is concerned, what to talk of more than a prima facie case, not even a prima facie case was made out against the petitioner. Having said that, this Court

feels no hesitation to conclude that the impugned order is an order without jurisdiction and the same 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 since the impugned order has been found to be suffering from patent illegality, being contrary to the law laid down by the Hon'ble Supreme Court in **Hardeep Singh's case** (supra), present petition deserves to be accepted.

Consequently, the impugned order dated 25.8.2014 passed by the learned Additional Sessions Judge, Hisar, whereby petitioner was summoned as an additional accused, to face the criminal trail, is hereby ordered to be set aside.

Resultantly, with the above-said observations made, the present petition stands allowed, however, with no order as to costs.

12.10.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE