

CRR-3052-2014 (O&M)

Date of decision : 07.12.2015

GOPAL MAHAJAN

..... PETITIONER

VS

STATE OF PUNJAB AND ORS

..... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. J.S.Bedi, Senior Advocate with
Mr. Harpreet Multani, Advocate
for the petitioner.

Ms. Amarjit Kaur Khurana, Addl.A.G., Punjab.

Mr. P.S.Hundal, Senior Advocate with
Mr. Jashandeep Singh, Advocate
for respondents No.2, 6 & 7.

Mr. G.S.Verma, Advocate
for respondents No.3, 4, 5 and 8.

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

AJAY TEWARI, J. (Oral)

This petition has been filed against the order of the trial Court declining the application under Section 319 Cr.P.C.

As per the allegations 15 persons of the accused party had attacked the complainant party and had caused fire arm injuries to 5 persons. Ultimately the police filed a challan only against 7 persons and kept the remaining 8 in column No.2. The complainant party moved application under Section 319 Cr.P.C. and the same having been dismissed, is before this Court.

Learned senior counsel appearing on behalf of the petitioner-complainant has raised two fold submissions. His first submission is that the injured and eye witnesses have unequivocally implicated all the remaining 8 persons. As regards this submission learned senior counsel appearing on behalf of the private respondents has sought to argue that from the allegations in the FIR as well as the statements made in the Court under Section 161 Cr.P.C. the involvement of the 8 persons is highly suspect because there are anomalous attributions, and rather as regards Tanvir Singh-respondent No.2, the only bald allegation is of conspiracy without any overt act being attributed to him.

Learned senior counsel appearing on behalf of the petitioner has then argued that the trial Court has been unduly and disproportionately influenced by the investigation report only because the 4 member SIT consisted of 1 IPS and 2 PPS officers. As per him the Court has not at all independently considered the evidence against the remaining accused and has exculpated them, as mentioned above, only on the basis of the report of the SIT. Learned senior counsel for the accused has countered by arguing that in any case the entire material is now before this Court and an objective assessment by this Court would clearly show that the conclusion arrived at by the trial Court is not incorrect.

In my opinion a reading of the order does support the conclusion that the trial Court has been disproportionately influenced by the findings of the SIT. Resultantly it has to be held that the approach of the trial Court was not entirely correct. Once I have come to this conclusion the

plea of learned senior counsel appearing on behalf of the private respondents that this Court should assess the role of each of the persons does not commend itself to me. Had it been a case where the approach of the trial Court was correct but the conclusions were wrong it may have been justified for this Court to look into this matter independently but in view of the conclusion I have drawn it would be appropriate if the impugned order is set aside and the trial Court is directed to consider the matter afresh after giving due consideration to the entire material on the file and without being unduly influenced either by the exculpatory report of the SIT or the inculpatory allegations of the complainant party.

With these observations the impugned order is set aside and the matter is remanded back to the trial Court as per law. Needless to say I have not expressed any opinion on the merits of the case.

Petition stands disposed of in the above terms.

Since the main case has been decided, the Criminal Misc. Application, if any, also stands disposed of.

December 07, 2015

sunita/pooja Sharma-I

(AJAY TEWARI)
JUDGE