

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3592-2014

Date of decision: 29.09.2015

Raman Kumar

... Petitioner

Vs.

State of Punjab and ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Naresh Kaushik, Advocate
for the petitioner.

Mr. K.D. Sachdeva, Addl. AG, Punjab.

Mr. V.K. Thakur, Advocate
for respondent No.3.

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 06.10.2014, passed by learned Additional Sessions Judge, Kapurthala, whereby application moved by the petitioner, through the prosecuting agency, under Section 319 of the Code of Criminal Procedure ('Cr.P.C.' for short), was dismissed, he has approached this Court, by way of instant criminal revision petition, for setting aside the impugned order.

Notice of motion was issued only qua respondent No.3-Rajesh Kumar @ Kala-accused, whereas it was dismissed qua Paramjit Kaur @

Preeti-respondent No.2.

Learned counsel for the petitioner submits that learned trial Court has misdirected itself, while passing the impugned order because there was sufficient evidence to summon respondent Rajesh Kumar @ Kala, as an additional accused to face the criminal trial. He further submits that respondent No.3 was named in the FIR, however, he was declared innocent by the investigating agency during the course of investigation and was put in column No.2. When petitioner appeared as PW1 in the Court, he again reiterated the allegations, levelled against respondent No.3 namely Rajesh Kumar @ Kala, in the FIR. It was at this stage that an application under Section 319 Cr.P.C. was moved for summoning Rajesh Kumar @ Kala-respondent No.3 as an additional accused to face the criminal trial. However, the learned trial Court failed to appreciate the true facts and the nature of allegations levelled against the respondent-accused, while passing the impugned order and the same has 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 respondent No.3-accused submits that there was no evidence against respondent No.3 which might disclose even a prima facie case against him. The learned trial Judge has proceeded on a factually correct and legally justified approach, while passing the impugned order and the same deserves to be upheld. He seeks 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 in the given fact situation obtaining in the present case, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the impugned order passed by the learned Additional Sessions Judge would show that the learned trial Judge has considered each and every relevant aspect of the matter, while passing the impugned order. After discussing the nature of allegations levelled against the respondent-accused, the learned trial Court did not find even a prima facie case for summoning him as an additional accused and rightly so, because no prima facie case was made out. Having said that, this Court feels no hesitation to conclude that the learned Additional Sessions Judge committed no error of law, while passing the impugned order and the same deserves to be upheld.

It is a matter of record that respondent No.3 namely Rajesh Kumar @ Kala and respondent No.2 namely Paramjit Kaur @ Preeti were unmarried brother and sister of Sukhdev Kumar-husband of the deceased. In the recent past, it has come to the notice that there is a general tendency to implicate maximum number of members of the family of the husband in this kind of cases, as observed by the Hon'ble Supreme Court in **Geeta Mehrotra Vs. State of U.P. and anr., 2012 (10) SCC 741**. It does not appeal to reason that what role could have been played by unmarried sister and brother of the husband in the commission of offences, as alleged in the present case. Under these circumstances, it can be safely concluded that the petitioner has tried to falsely implicate maximum members of the family of the accused-husband. This was the reason that the investigating agency rightly declared respondents

No.2 & 3 as innocent. However, since the petitioner was bent upon to implicate them as accused, he moved the application under Section 319 Cr.P.C. However, said application has rightly been dismissed by the learned trial Court, while passing the impugned order and the same deserves to be held, for this reason also.

Further, the impugned order passed by the learned trial Court has been found in consonance with the law laid down on the subject by the Hon'ble Supreme Court in its Constitution Bench judgment in the case of **Hardeep Singh Vs. State of Punjab and others, 2014 (3) SCC 92**. The relevant observations made by the Hon'ble Supreme Court in para 99 of the judgment, 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 unrebutted, 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."

During the course of hearing, when a pointed question was put to learned counsel for the petitioner, as to how the impugned order runs counter to the law laid down by the Hon'ble Supreme Court in **Hardeep Singh's** case (supra), he had no answer and rightly so, it being a matter of record. What to talk of a more than prima facie case, not even a prima facie case was found to be made out against the respondent-Rajesh Kumar @ Kala, so as to enable the learned trial Court to summon him with the aid of Section 319 Cr.P.C., as an additional accused to face the criminal trial. Thus, it is unhesitatingly held that the learned trial Court was well justified and within its jurisdiction, while passing the impugned order and the same deserves to be upheld, 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 instant petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

29.09.2015
vishnu