

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR No.4060 of 2014
Date of Decision: July 02, 2015**

Anil and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.A. Sheoran, Advocate
for the petitioners.

Mr. Dhruv Dayal, DAG, Haryana.

Ms. Anita Yadav, Advocate
for respondent No.2.

FATEH DEEP SINGH, J.

A criminal case by way of FIR No.90 dated 17.6.2006 under Sections 323,325 and 34 IPC was registered with Police Station, Kosli by complainant Sardari Devi. It is during the course of trial before the learned Sub Divisional Judicial Magistrate, Kosli an application under Section 319 Cr.P.C. for summoning of Anil and Sudama as additional accused was moved and which through orders of the learned trial Court dated 11.10.2012 stood dismissed. Thereafter, the State through the complainant filed a revision petition against these findings and the learned Court of Additional Sessions Judge, Rewari through impugned orders dated 13.11.2014 set aside the orders of learned Sub Divisional Judicial Magistrate, Kosli directing the trial Court to pass a

fresh order on the application under Section 319 Cr.P.C. in the light of observations in para 8 of the judgment. It is worthwhile to refer here that as per these observations in the impugned findings the learned Court has discussed the evidence holding that these two persons also participated in the crime and liable to be summoned to face trial. It is against these findings, these two revisionists have come up in this revision.

Heard learned counsel for the parties. Perused the records of the case which shows that initially pertaining to this occurrence DDR dated 17.5.2006 was recorded in the Police Station and a perusal of the same shows that names of Anil and Sudama have been mentioned therein and, thus, rules out as has sought to be put forth by learned counsel for the petitioners that there is subsequent fabrication of the evidence and improvement of the case. Further more, on the basis of this DDR entry FIR was registered and wherein also names of these two persons figure sufficient rebuts the stand of the learned counsel for the petitioners to this effect. As has been brought to the notice of this Court on behalf of the learned counsel for the respondents, that for factual clarification even during the course of trial PW2 Sardari Devi has attributed role to both these petitioners in the commission of offence are matters which certainly substantiates allegations of their participation coupled with the corroboration that has been put forth through medico legal reports and the testimony of the doctor, who examined the injured to this effect. Thus, it cannot be said that these revisionists are subsequently at a belated stage being fabricated in the case.

Since the petitioners have come up before this Court under the provisions of Section 401 Cr.P.C. and which provisions empowers this Court to show indulgence where the trial Court has wrongly shut out the evidence which the prosecution wishes to produce,

where the admissible evidence is wrongly brushed aside as inadmissible, where the trial Court has no jurisdiction to try the case and has still acquitted the accused, ***where the material evidence was overlooked by the trial Court or Appellate Court or the order is passed by considering irrelevant evidence*** and where the acquittal is based on the compounding of the offences are some of the eventualities laid down in the case of **Sheetla Prasad vs. Sri Kant AIR 2010 S.C. 1140** which could be one of the reason to interfere into these findings. Learned counsel for the petitioners could not bring to the notice of this Court any of the eventualities which could put the impugned order in a bad light. Though, learned counsel for the petitioners has sought to embark upon interpreting the evidence and the manner of the investigations certainly are uncalled for as they are not subject matter of dispute before this Court and the very legality and propriety of the impugned order have to looked upon. Though, the impugned order certainly is not happily worded and the learned Court ought to have restrained itself from drawing conclusions qua the evidence and passing any specific attributions and drawing conclusions on the basis of the same. Certainly nothing can be found fault with in the impugned order otherwise on merits. The revision petition being hopelessly without any merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

July 02, 2015
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