

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRR No.4124 of 2014
Date of Decision : 12.10.2015

Kuljit Kaur

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. Anurag Arora, Advocate for the petitioner.
Mr. K.D. Sachdeva, Addl. A.G., Punjab.

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

RAMESHWAR SINGH MALIK, J

Feeling aggrieved against the impugned order dated 22.9.2014 passed by the learned Sessions Judge, Sangrur, whereby petitioner was summoned as additional accused to face the criminal trial with the aid of Section 319 Cr.P.C., he has filed the instant criminal revision petition for setting aside the impugned order.

Notice of motion was issued.

Learned counsel for the petitioner submits that petitioner was not named in the FIR. He was sought to be implicated falsely at a later stage during the course of trial, on the basis of a statement of the injured recorded under Section 161 Cr.P.C. He further submits that since the learned trial court has misdirected itself, while not appreciating the true factual aspect of the matter,

while passing the impugned order, the same has resulted in miscarriage of justice. He prays for allowing the present petition.

On the other hand, learned counsel for the State submits that since the petitioner was not fit to make the statement at the time of registration of the FIR, his statement was later on recorded under Section 161 Cr.P.C, wherein he alleged specific role against the petitioner. However, petitioner was declared innocent by the investigating agency, but thereafter, when the statement of injured was recorded as PW-1 before the court, application under Section 319 Cr.P.C was moved, which was rightly allowed by the learned Sessions Judge. He prays for dismissal of the present petition.

Having heard learned counsel for the parties and after careful perusal of the record of the case, this court is of the considered opinion that since the learned Sessions Judge has passed the impugned order, which clearly runs counter to the law laid down by the latest Constitutional Bench judgement of the Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab 2014(3) SCC 92**, the impugned order cannot be sustained.

It is so said because the learned Sessions Judge has failed to record his satisfaction that there was more than prima facie case made out against the petitioner. It is also a matter of record that petitioner was not named in the FIR. Further, even after having been sought to be implicated by the injured, as per his statement recorded under Section 161 Cr.P.C., investigating agency declared the petitioner as innocent and rightly so, because there was no sufficient incriminating material against the petitioner. Since the learned Sessions Judge has failed to appreciate this crucial aspect of the matter, impugned order has been found to be suffering from patent illegality and the same cannot be sustained.

The relevant observations made by the Hon'ble Supreme Court in para 99 of the judgement 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 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.”

What to talk of a more than prima facie case against the petitioner, the learned Sessions Judge has not recorded that even a prima facie case was made out against the petitioner. In this view of the matter, it can be safely concluded that since the learned trial court has passed the impugned order contrary to the law laid down by the Hon'ble Supreme Court in **Hardeep**

Singh's case (supra), it cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case, coupled with the reasons aforementioned, this court is of the considered view that the present petition deserves to be accepted. Consequently, the impugned order dated 22.9.2014 passed by the learned Sessions judge, Sangrur, is hereby set aside.

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

12.10.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE