

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.432 of 2015 (O&M)
Date of decision: February 09, 2015

Bodh Raj

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajiv Joshi, Advocate
 for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this revision petition under Section 401 Cr.P.C. against State of Punjab and Avtar Singh respondents challenging the order dated 05.01.2015 passed by learned Judge, Special Court, Jalandhar vide which the application under Section 319 Cr.P.C. filed by the petitioner has been dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

As per the record, the present petitioner is facing trial under Sections 409, 420 IPC etc. and under Section 13(1) read with Section 13(2) (d) of the Prevention of Corruption Act, 1988. An application has been filed by the accused under Section 319 Cr.P.C. for summoning Avtar Singh, Officiating Treasury Officer and Senior Assistant at Treasury Officer, Phillaur, as accused to face trial. It is

stated in the application that in the statement of PW-16 Major Singh, Inspector Vigilance Bureau and PW-13 Tajinder Singh, now DDO Government High School, Paddi Jagir, Tehsil Phillaur duly recorded in the Court, it has been clearly and categorically mentioned that Avtar Singh, Officiating Treasury Officer, who has also deposed before this Court as PW-15, is fully responsible for the embezzlement and the whole money has been embezzled with his connivance and this fact has also been apparently proved by PW-16 Major Singh by whom the preliminary enquiry was conducted.

Learned trial Court, after taking the reply and hearing learned counsel for the accused-applicant as well as learned APP, dismissed this application. As per the prosecution version, FIR has been registered against accused Bodh Raj, Science Master, Jatinder Kumar, Clerk and Gurdial, DPE on the allegations that they in connivance with each other had forged and fabricated bills regarding GP fund accounts of the year 2008 to 2010 of the teachers posted in said school and embezzled the amount. After completion of investigation, challan was presented against the accused.

The perusal of the record shows that allegations regarding preparing of fabricated and forged bills and embezzlement of amount have been levelled only against accused Bodh Raj, Jatinder Kumar and Gurdial. The person, to whom the accused-applicant want to get summoned, has already been examined by the prosecution as PW-15. There is no allegation that any of the amount has been embezzled by PW-15 Avtar Singh. Even if it is taken that he has committed some

omission while doing his official duties in supervisory capacity and has not complied with some of the rules given in Punjab Civil Services Rules, even then, no offence is made out against Avtar Singh. There is no evidence on record, at this stage, to show that Avtar Singh has embezzled the amount. While appearing as PW-15, Avtar Singh has given detailed procedure. As already discussed, even if it is presumed that he had committed some acts of omission, even then, he is not liable for criminal offence and only for departmental action, if at all. For criminal offence, malafide intention or mens-rea is necessary.

It is clear from the impugned order that case is at final stage as about 16 witnesses have already been examined. The prosecution has not moved any application for summoning of Avtar Singh as an additional accused, rather, has contested the application in question. Neither sanction under Section 19 of the Prevention of Corruption Act has been obtained from the competent authority nor there is any sanction under Section 197 Cr.P.C.

To summon an accused under Section 319 Cr.P.C., it should appear to the Court that the person to be summoned is involved in the commission of the offence and should face trial along with other accused.

From the record, I find that no such evidence has been brought on record from where it can be held that Avtar Singh is also involved in the commission of offence.

In view of the above discussion, I find that the order

passed by learned Judge, Special Court, Jalandhar is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the preset petition, the same is dismissed.

February 09, 2015
Vgulati

(INDERJIT SINGH)
JUDGE