

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

CRR No.741 of 2014 (O&M)

Sanjiv Kumar and another

...Petitioners

VERSUS

State of Punjab and another

...Respondents

(2)

CRR No.746 of 2014 (O&M)

Gaurav Bansal

...Petitioner

VERSUS

State of Punjab and another

...Respondents

Date of Decision: January 13, 2015

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGHPresent: Mr.Sanjiv Gupta, Advocate
for the petitioners.Mr.Gurinderjit Singh, Deputy Advocate General, Punjab
for the respondent-State.Mr.Jasdeep Singh Gill, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Both these revision petitions are taken up together being
arisen from same order.

Petitioners have filed these revision petitions under

Section 401 Cr.P.C. against State of Punjab and Vinod Kumar respondents challenging the impugned order dated 19.02.2014 passed by learned Addl. Sessions Judge, Faridkot, vide which application under Section 319 Cr.P.C. filed by respondent No.2 has been allowed and petitioners have been summoned to face trial.

Notice of motion was issued in both the petitions and learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that challan was presented against accused Vinod Kumar (present respondent No.2), Sahib Ram, Sanjay Kumar and Sukhpal Singh in case FIR No.37 dated 19.02.2008 registered at Police Station Sadar Faridkot. In that case, application under Section 319 Cr.P.C. was filed by one of the accused for summoning Sanjeev Kumar, Manoj Kumar and Gaurav Bansal (present petitioners) as accused to face trial, on the basis that sufficient evidence has come during trial, on examination of PW-5 Joginder Pal and other witnesses.

As per the application, the case of the accused is that Sanjeev Kumar, Manoj Kumar and Gaurav Bansal have been arrested with contraband and Investigating Officer in his statement has stated that Tarsem Singh PW came to them. One Indica car bearing registration No.HR-25B-2051 came from the side of Sikhanwala.

Sanjeev Kumar and Manoj Kumar were sitting on the front seats and

Gaurav Bansal was sitting on the rear seat. DSP Paramvir Singh has called at the spot and in his presence, smack was recovered from Sanjeev Kumar and Manoj Kumar weighing 410 grams and a case was registered.

Whereas, the case of the prosecution before the trial Court in reply was that application is malafide as the applicants themselves are guilty of kidnapping Sanjeev Kumar, Manoj Kumar and Gaurav Bansal and are also guilty of planting contraband and implicating the above persons in connivance with ASI Sukhpal Singh against whom a separate case under the provisions of Prevention of Corruption Act is pending. The above named persons i.e. Sanjeev Kumar etc. were found innocent after a thorough enquiry by SIT headed by Sh.Farooqi SSP Mansa. It is further the case of the prosecution that the application was filed to delay the trial as sufficient evidence has come against the accused.

At the time of arguments, learned counsel for the petitioners argued that petitioners are witnesses in the FIR case. They have been falsely implicated by the accused with the help of ASI Sukhpal Singh and false recovery has been planted for which ASI Sukhpal Singh is facing trial for the commission of offence under Prevention of Corruption Act along with other accused in this case.

From the record and also from the arguments, I find that Sh.M.F.Farooqi, DIG Ludhiana, appeared in the witness box and deposed as per prosecution version and also deposed in favour of the present petitioners regarding their innocence. As per the arguments,

petitioners have been cited as witnesses and out of the petitioners, Sanjeev Kumar has already been examined in this case. The statement of Inspector Joginder Pal was also recorded, on the basis of which application under Section 319 Cr.P.C. filed by the accused was allowed.

The perusal of the record, especially the impugned order shows that trial Court has neither discussed the evidence of PW-1 Sh.M.F.Farooqi nor the trial Court has discussed that one of the petitioner was witness in this case and also other facts and circumstances of the case. During the investigation conducted by the SIT headed by the then SSP Mansa, it was found that present petitioners have been kidnapped at the instance of accused with the help of ASI Sukhpal Singh and false recovery has been planted upon the present petitioners. Simply, if one of the witness PW-5 Joginder Pal deposed against the present petitioners, in no way, without discussion of other evidence which has come on the record, it can be held that present petitioners are involved in the commission of offence and they should also be summoned to face trial along with accused who are facing trial on the basis of separate set of evidence. As per the investigation, the accused who are facing trial, have falsely implicated the petitioners in a criminal case by showing false recovery and after investigation, challan was presented against ASI Sukhpal Singh and other accused. There is no finding of learned trial Court while deciding the application under Section 319 Cr.P.C. that version of the prosecution is false, only then learned trial Court can summon

present petitioners.

From the above discussion, I find that the order passed by learned Addl. Sessions Judge, Faridkot is illegal and against the law.

Therefore, finding merit in both the revision petitions, same are allowed. The impugned order dated 19.02.2014 passed by learned Addl. Sessions Judge, Faridabad is set aside.

January 13, 2015
Vgulati

(INDERJIT SINGH)
JUDGE