

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-32767 of 2014(O&M)
Date of Decision: May 13, 2016

Shamsher and others

...Petitioners

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Parminder Singh, Advocate
for the petitioner.

Mr.D.R.Singla, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. against respondents State of Haryana and Babli for setting aside the judgment dated 05.09.2014 passed by learned Addl. Sessions Judge, Karnal, whereby the criminal revision filed by the State was allowed and the order dated 13.10.2012 passed by learned Judicial Magistrate Ist Class, Assandh, dismissing the application under Section 319 Cr.P.C., was set aside.

Notice of motion was issued and learned State counsel appeared and contested the petition.

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

From the record, I find that learned JMIC, Assandh dismissed the application under Section 319 Cr.P.C. vide order dated 13.10.2012 filed by prosecution for summoning additional accused namely Banti, Shamsheer and Savitri.

The perusal of the order passed by learned JMIC, Assandh shows that prosecution evidence has been closed and the statement of accused persons under Section 313 Cr.P.C. has been recorded and at the stage of final arguments, this application has been filed. The Court after discussing the evidence held that perusal of the evidence of PW-2 and the Doctor makes it clear that evidence of the complainant is inconsistent with her earlier version. In her evidence before the Court, she has stated that her son Amit, one of the injured and now deceased, fell unconscious when Banti assaulted on his private parts and Banti has caused injuries on complainant's left thumb by kassi. She has further stated that mother son duo were admitted in hospital for seven days but evidence of PW-3 Doctor is that Amit was not admitted in the hospital. PW-1 also corroborates the version of PW3. She has further stated that they reached the hospital by motorcycle of a third person. The driver of the motorcycle dropped them at Salwan Chowk from where they reached CHC, Assandh by rickshaw together. But evidence of doctor is that complainant came to the hospital fully conscious and all alone and Amit came along to the hospital. The Court also discussed that evidence that complainant has stated that after reaching the hospital, on 3rd and 4th day, police met her for the first time and before that no

police man met her but she has again stated that one police man who was a Sardar came to her but did not record her statement. Learned Magistrate further held that there are several improvements in the version of complainant in her examination-in-chief and she was duly confronted with her first version. She also admitted regarding one affidavit given to the police, though stated that it was prepared under pressure.

Learned JMJC, Assandh, after discussing the evidence, finding no merit in the application under Section 319 Cr.P.C., dismissed the same. A revision petition was filed by the State through Babli before Addl. Sessions Judge, Karnal, which was allowed vide judgment dated 05.09.2014.

The perusal of the impugned judgment dated 05.09.2014 shows that only the accused, who were facing trial, were made party and present petitioners were not made a party in the revision petition. Therefore, question of giving notice to the present petitioners by the Revisional Court, does not arise. The impugned judgment dated 05.09.2014 shows that no notice has been given to the present petitioners and against them, the Revisional Court passed the adverse order. It is settled law that no adverse order can be passed against the persons/accused to whom the notice has not been given but in the case in hand, even the petitioners were not made party before revisional/Sessions Court.

In view of the above discussion, I find that the impugned judgment dated 05.09.2014 passed by learned Addl. Sessions Judge,

Karnal, on the face of it, is illegal. Further, it has been brought to the notice of this Court that main accused, who were facing trial, have already been acquitted by the Court below. Keeping in view this fact also, the present petitioners cannot be summoned to face trial, now after the acquittal of the main accused.

Therefore, finding merit in the present petition, the same is allowed. The impugned judgment dated 05.09.2014 passed by learned Addl. Sessions Judge, Karnal is hereby set aside.

May 13, 2016
Vgulati

(INDERJIT SINGH)
JUDGE