

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

(119)

CRM-M-41797-2016

Decided on: December 17, 2016.

Jagbir Singh

.... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Manish Soni, Advocate, for the petitioner.

M.M.S. BEDI, J (ORAL)

The petitioner, an accused, has questioned the legality and propriety of order dated 03.06.2016 dismissing application under Section 193 Cr.P.C read with Section 227 Cr.P.C seeking to summon Ravinder as an accused by passing a simultaneous order of discharge of the petitioner. The said application has been dismissed by the Additional Sessions Judge, Gurgaon on the ground that after framing of charges against the petitioner, it will be judicial impropriety to summon Ravinder as an additional accused. While dismissing application under Section 193 Cr.P.C, the trial Court has safeguarded the right of the petitioner to file a separate private complaint against Ravinder, if so advised.

Learned counsel for the petitioner submits that the petitioner has been the complainant in the original FIR but during course of investigation Ravinder has been able to implicate the petitioner with mala fide intention, taking the assistance of his brother Vijay Kumar who is working as an Inspector and that sister of the petitioner has filed an FIR against said Vijay Kumar under Section 498-A IPC.

No doubt, as per judgment in *Dharampal and others Vs. State of Haryana, 2013 (3) RCR (Criminal) 787*, the Sessions Court has got jurisdiction to summon an additional accused prior to the stage of Section 319 Cr.P.C. In the present case, the petitioner has claimed that there is overwhelming evidence against Ravinder as such he should have been summoned as additional accused.

I have heard learned counsel for the petitioner and gone through the nature of the allegations against Ravinder and have also perused the challan which has been presented against the petitioner.

Without expression of any opinion on merits, I am of the considered opinion that application under Section 193 Cr.P.C can be filed, in case there is overwhelming evidence on the record collected during course of investigation prior to the stage of Section 319 Cr.P.C.

No doubt by virtue of judgment of *Dharampal's case (supra)*, an application can be filed under Section 193 Cr.P.C. The said application cannot be filed at any stage. It will be expedient, in the interest of justice, if an application under Section 193 Cr.P.C is filed prior to the framing of charges. In case, any other accused is to be arrayed in those circumstances, the powers under Section 319 Cr.P.C can be exercised on an application filed by the complainant or the prosecution agency.

In the present case, the petitioner himself is an accused. After the case was committed, he, in the capacity as accused, sought summoning of Ravinder as additional accused claiming that in the original FIR, he had leveled allegations against Ravinder regarding which the material is there on the record.

In my opinion, application under Section 319 Cr.P.C was not maintainable after the charges having been framed.

Learned counsel for the petitioner has submitted that in this case, charges were framed on 04.06.2016 whereas application under Section 193 Cr.P.C was dismissed on 03.06.2016.

Be that as it may, I have considered the fact whether an accused can move an application under Section 193 Cr.P.C for summoning an additional accused, I am of the considered opinion that an accused have got no locus standi to seek the addition of other accused by using the legal provisions of Section 193 Cr.P.C. The rights to proceed against Ravinder have been safeguarded by the impugned order.

No ground is made out for interference in the order passed by the trial Court.

The petition is dismissed.

Nothing mentioned in this order will prejudice the right of the petitioner to avail any other legal remedy available to him in accordance with law.

(M.M.S. BEDI)
JUDGE

December 17, 2016
harsha

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No