

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

**Crl. Revision No.3448 of 2014 (O&M)
Date of Decision: 18.02.2016**

Randhir

...Petitioner

Versus

State of Haryana & another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? No

Present: Mr. Arun Singal, Advocate
for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

ANITA CHAUDHRY, J.

1. This revision has been filed by the accused assailing the order dated 18.09.2014, whereby the charge has been amended.

2. The backdrop is necessary. A complaint was given by Nardev Singh. Consequent thereon, an FIR was registered on 15.03.2013 under Section 363, 366, 120-B IPC at Police Station City Panipat. The daughter of the complainant had left home at 11:30 AM on 12.03.2013 and she did not return. The complainant suspected Kuldeep son of the petitioner of having taken his daughter with the intention to get married to her. The complainant also doubted Kuldeep's uncle to be involved

as Kuldeep was constantly in contact with Amit on phone. A supplementary statement was suffered on 05.04.2013 and it was disclosed that Randhir (present petitioner) alongwith his relatives had kidnapped his daughter and had gone to the house of in-laws of Kuldeep to get Kuldeep's marriage annulled with his wife Seema. The matter had been settled in Rs.3.5 lacs and he (petitioner) was also part of the conspiracy.

3. Kuldeep could not be arrested. Challan was filed only against the petitioner under Section 363, 366, 120B IPC.

4. After commitment, charge was framed against the petitioner on 17.09.2013. The prosecution examined its entire evidence. Final arguments had been heard, the judgment was reserved for pronouncement. On 01.05.2014, an application was moved by Public Prosecutor seeking alteration of charge. It had been pointed out by the prosecution that in the charge framed, the conspiracy was stated to be between Randhir with Seema, Krishan and Amit whereas Seema and Krishan were prosecution witnesses and not the accused and the real fact was that Randhir had hatched a conspiracy with accused who had abducted the victim.

5. The accused filed his reply on 08.05.2014 and on the same day, as there was a mistake, charge Ex.P7 was amended. The complainant was called for his examination and thereafter, the case was fixed for defence evidence. Another application Annexure P-10 was moved by the prosecution

again seeking alteration of the charge. It was pleaded therein that the date of incident was 12.03.2013 but inadvertently, the date mentioned in the charge was 22.03.2013 and the date should be corrected. The case was again adjourned for the reply. The application was allowed. While allowing the same, the Court also observed that charge should have also been framed under Section 365 IPC.

6. Challenge has been laid to the charge framed on 18.09.2014 and the grounds pleaded are contained in para no.6 of the revision. The petitioner has pleaded that he has been wrongly charge-sheeted under Section 120-B IPC and it would be applicable only when there is some main accused and there is no other accused who was being tried and therefore Section 120-B IPC was not applicable. The second ground of challenge was that as he was not named in the FIR and had no knowledge about his son as he was missing since 09.12.2012. It was pleaded that the prosecution had not gathered fresh evidence and the application was moved by the prosecution after the arguments had been addressed. It was pleaded that the application was moved the second time as the prosecution was unable to get the petitioner convicted on the first count. It was pleaded that the allegations under Section 365 IPC were only against Kuldeep and Amit who were missing and the charge could not be framed against him.

7. I have heard both the sides.

8. It is necessary first to refer to the order passed on

29.10.2014, upon which notice was issued:-

"Learned counsel refers to the charge-sheet dated 17.09.2013, wherein the petitioner is not shown as an accused. In the subsequent application, the charge was altered and petitioner was summoned vide order dated 8.5.2014. Petitioner is the father of the co-accused. No role has been ascribed to him.

Notice of motion for 1.12.2014.

At this stage, Mr. Ajay Gulati, DAG, Haryana accepts notice on behalf of the State and seeks time.

Copy of the paper book has been handed over to the learned State counsel in Court.

Trial Court is directed to adjourn the case beyond the date given by this Court."

9. The facts which are available on record are clear that the petitioner was not initially named in the FIR but a supplementary statement was given by the complainant and challan was filed against the petitioner, charge was framed against him. It is not a case where the petitioner has been summoned vide order dated 08.05.2014 as was projected on the first date of hearing. At the stage of framing of charge, the Court was only to see whether there were allegations for framing charge. The complainant had named the petitioner. The police had investigated and had filed the challan and charge was framed. After the complete trial, when the matter was fixed for pronouncement of order, the Public Prosecutor brought to the notice of the Court that a wrong date had been mentioned in the charge framed in September, 2013. The charge was amended. Those orders were never assailed by the petitioner. It was brought to the notice of the Court that

the charge contained names of persons who were prosecution witnesses, therefore, it had to be amended and was rightly done. The Court then gave opportunity to both the sides to lead evidence. Opportunity was also given to cross-examine them and lead evidence in defence.

10. Another application was moved by the Public Prosecutor pointing out to the Court that wrong date had been mentioned while amending the charge. The date of incident was wrongly mentioned as 22.03.2013 instead of 12.03.2013. The Court corrected the mistakes and added Section 365 and 366 IPC and rightly so, as from the very beginning allegations were that the daughter had been enticed with an intention to compel her to get married. The petitioner was alleged to have conspired. The charge was amended. Since additional charges had been framed, the Court had to give an opportunity to the prosecution if they wanted to examine the witnesses again. The defence was also to be given an opportunity to cross-examine the witnesses. Unfortunately the petitioner had not placed the orders subsequent to the framing of the charge. The State is also not able to provide information as to whether that opportunity was given. The Public Prosecutor and the Courts before whom the matter was pending, should have been more careful. The mistake should have been detected earlier. The trial has been held up for almost two years.

11. The revision filed by the petitioner assails the charges on the grounds which are not available to him. The charge had been framed in 2013. That order was never challenged. The petitioner is alleged to be a part of the conspiracy. He was named in the supplementary statement. The fact that his son was missing, has to be proved by him in the defence. I find no merit in the revision, however, the trial Court would give opportunity to the prosecution and the right of further cross-examine to the accused if not already given. The trial had been delayed, the Court would fast track the disposal by taking it up every week, so that the trial is concluded within 3 months.

The petition is dismissed with the above directions.

(ANITA CHAUDHRY)
JUDGE

18.02.2016

'Sunil'