

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.4002 of 2014 (O&M)
Date of Decision: January 28, 2016

Naresh Kataria

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.P.S.Sidhu, Advocate
for the petitioner.

Mr.P.S.Grewal, Deputy Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision petition has been filed by the petitioner Naresh Kataria against respondent State of Punjab, challenging the impugned order dated 16.10.2014 passed by learned Judge, Special Court, Moga, vide which the petitioner was summoned as one of the accused.

Notice of motion was issued and learned State counsel appeared and filed reply.

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 the challan was presented against accused Sukhdev Singh @ Sukha in case FIR No.44 dated

04.06.2011 under Section 15 of the NDPS Act registered at Police Station Ajit Wal. When the case was fixed for defence evidence and arguments, at that time before trial Court it was argued by learned defence counsel that accused has been falsely implicated in this case. He has no connection with the alleged recovery. He was arrested treating him to be Tarsem Singh, on whose name, the vehicle involved in this case was transferred on 07.06.2011 from the name of Naresh Kataria.

The Court below after discussing the facts of the case, summoned Naresh Kataria under Section 25 of the NDPS Act. As per the prosecution version, on 04.06.2011, the police party was holding *naka* and during the checking of the vehicles, one Scorpio bearing registration No.PB-05G-9132 came from the side of G.T. road towards village Chuhar Chak. The driver tried to ran away but apprehended and he disclosed his name as Sukhdev Singh @ Sukha. On checking, 11 bags each containing 35 kgs. of poppy husk were recovered. As per the report dated 16.06.2011 of District Transport Officer, the Scorpio, which was used for transporting huge quantity of poppy husk was in the name of Naresh Kataria. The Court held that it appears that to get rid of from the criminal liability, the vehicle was got transferred in the name of Tarsem Lal. The Court further held that Naresh Kumar, owner of the vehicle was not implicated as accused in this case and he was summoned.

First of all, I find that when an additional accused is to be summoned after some evidence, he can be summoned only under

Section 319 Cr.P.C. and under Section 319 Cr.P.C., the Court is to consider the evidence on record and then it should appear to the Court that the person, to be summoned as an accused, is involved in the commission of the offence. In the impugned order dated 16.10.2014, there is nothing that Court has discussed any evidence on record. No statement of any PW including Investigating Officer has been discussed. Nothing has been discussed as to which evidence is against Naresh Kataria. Secondly, Sukhdev Singh @ Sukha has been apprehended on the spot and if his counsel argued anything regarding owner of the vehicle, this argument, in itself, cannot be treated as evidence. Even in this case, the defence counsel argued that the accused has been falsely implicated by treating him as Tarsem Singh in whose name the vehicle was transferred on 07.06.2011 from the name of Naresh Kataria.

Learned counsel for the revision petitioner brought to the notice of this Court the documents on record showing that Tarsem Lal, as per Annexure P-8 at entry No.52 has deposited the amount for transfer of the vehicle and then Annexure P-10 showing the receipt of challan dated 06.04.2011 and also brought to the notice, the statement of Mulakh Raj, Assistant in the office of DTO Office, Ferozepur dated 01.12.2014 before Addl. Sessions Judge, Moga where the official of DTO office stated before same Court that the vehicle was registered in the name of Naresh Kataria and it was transferred in the name of Tarsem Lal on 07.06.2011. He has also stated that transfer fee with regard to this vehicle was deposited by

Tarsem Lal on 06.04.2011 and total amount of ₹45,050/- collected on 06.04.2011 was deposited with the bank on 07.04.2011 by the DTO office. The amount of ₹200/- was also deposited by Tarsem Lal vide receipt No.580152 dated 06.04.2011.

Keeping in view the above statement and other documents, which are placed on record, it cannot be held that Naresh Kataria has fraudulently sold the vehicle after the recovery nor there is anything on the record that he intentionally gave the vehicle for use of transportation of poppy husk. The FIR is of later date i.e. 04.06.2011. The change of RC in the name of Tarsem Lal was already applied much earlier to the FIR.

In view of the above discussion, I find that the impugned order dated 16.10.2014 passed by learned Judge, Special Court, Moga, is illegal, not as per law and the same is set aside.

Therefore, finding merit in the present revision petition, the same is allowed.

January 28, 2016
Vgulati

(INDERJIT SINGH)
JUDGE