

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CrI.R.C.No.2958 OF 2016

ORDER :

The petitioner is no other than the son of A1 and A2 of C.C.No.727 of 2014 impugning the order dated 05.10.2016 of the learned VI Additional Junior Civil Judge, Guntur in CrI.M.P.No.1586 of 2016, on the application of the Public Prosecutor to implead him as co-accused (additional accused) by invoking Section 319 Cr.PC. by the Court, from the evidence of LW.1 and LW.2, who are *de facto* complainant and his wife as PW.1 and PW.2, since allowed ordering to issue summons to A3 to array as additional accused, maintained the revision.

The son of A1 and A2 is also present as if and he beat with iron rod is the statement of PW.1, in the chief examination equally of PW2, if not in so many terms. It is nothing new to their statement during investigation and in fact during investigation though initially this person also shown as accused in FIR from the police investigation reveals that he was studying in JKC College, Guntur by staying in private hostel run by one K.Praveen, LW.8. From the statement recorded of LW.8 shows that the petitioner by name G.Veeraiah Chowdary was in the hostel and it is on 01.09.2014 at about 09.00 AM or so, the said Praveen received a phone call from the father of the petitioner, informing that there is an altercation occurred between him

and LW.1-C.Ranga Rao, neighbour and asked to send the petitioner. On that day, he returned back at 11.30 AM to the hostel and he was in the hostel and did not even go to Village. The said alleged occurrence as per FIR was on 10.02.2014 at about 09.00 AM. Therefrom showing the petitioner was in the hostel of the said Praveen and it is impossible to believe the versions of the *de facto* complainant in the report vis-à-vis the statements of LWs.1 and 2, spelt the name of the petitioner and filed the final report against A1 and A2; that was taken cognizance of the offence under Sections 307 read with 34 IPC by the learned Magistrate in committing the case therefrom and on that stage there was no protest undisputedly from the *de facto* complainant and not even with any protest even after that stage and after committal and before taking cognizance under Section 193 Cr.P.C. by the Court of Session even within empowerment respectively as per the Constitution Bench expression of the Apex Court in **Dharam Pal and others v State of Haryana and another**¹. It is no doubt that is not the end as also laid down for the opportunity is there to invoke Section 319 Cr.PC during trial from the evidence on record, any material to take any additional accused among those against whom cognizance taken and charges framed in proceeding with trial. However, what is explained from **Dharam Pal's** case by another equal Constitution Bench of the Apex Court in **Hardeep Singh v**

¹ (2014) 3 SCC 306

State of Punjab² the scope of Section 319 Cr.P.C. From the evidence to take cognizance against additional accused cannot only be material for taking cognizance, but something more is required. No doubt evidence of PW.1 and PW.2 is there in tune to their statement of presence of A3 in FIR. Once the police after completing investigation deleted the name, not believing them saying particularly from the independent witness K.Praveen, here examination of said Praveen is crucial, even to come to any conclusion by the trial Court of Sessions. Thereby, it is premature for passing the impugned order by the learned Sessions Judge as what is the proof required for taking cognizance against a co-accused is not like the material for taking of cognizance, but something more as per the evidence on record.

Having regard to the above, the order of the lower Court is set aside and the matter is remitted back to consider any necessity of impleading the petitioner as co-accused after examining the other witnesses particularly said Praveen.

With the above observations, the Criminal Revision case is allowed. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, in the revision shall stand closed.

Dr. B. SIVA SANKARA RAO, J

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² (2014) 3 SCC 92