

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

CRM No.M-24753 of 2015 (O&M)

Date of Decision: January 10, 2017

Sunita

...Petitioner

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.K.Verma, Advocate
for the petitioner.

Mr.Siddharth Sanwara, Deputy Advocate General, Haryana
for the respondent-State.

Mr.N.C.Kinra, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondents State of Haryana and Partibha for setting aside the order dated 06.01.2015 passed by learned Judicial Magistrate Ist Class, Rohtak, vide which the application under Section 319 Cr.P.C. was allowed and petitioner was summoned as additional accused and also judgment dated 01.06.2015 passed by learned Addl. Sessions Judge, Rohtak vide which the revision filed by the petitioner was also dismissed.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

From the record, I find that challan against accused Subhash was presented in case FIR No.187 dated 03.04.2010 under Sections 106, 341, 420 and 506 IPC. During the trial, an application under Section 319 Cr.P.C. was filed for summoning Sunita as additional accused. The FIR was lodged against Subhash and Sunita but after investigation, the police has filed the charge-sheet only against Subhash and name of Sunita was kept in column No.2. When the complainant Partibha was examined-in-chief, then the application under Section 319 Cr.P.C. was filed. It is argued that name of Sunita is there in the statement recorded under Section 161 Cr.P.C. as well as in the statement recorded in the Court, therefore, the application should be allowed. Learned Magistrate after discussing the law on the point held that from the statement recorded under Section 161 Cr.P.C. of the complainant as well as of other witnesses and examination in chief of complainant Partibha, it appear that Sunita has actively participated along with main accused in the commission of the alleged offences. Therefore, in view of her role, she is also liable to be summoned to face trial under Section 319 Cr.P.C.

The perusal of the impugned order shows that nowhere the role of present petitioner has been discussed. Learned JMIC, Rohtak, has passed the impugned order in routine manner without giving any reason as to how it appears to the Court that Sunita is involved in the commission of the offence. A revision was filed by the petitioner, which was also dismissed by learned Addl. Sessions Judge, Rohtak.

The perusal of impugned order itself shows that the Court

below while summoning the present petitioner as additional accused, has

firstly not given the reasoning and order has been passed in routine. Secondly, the Court below has also taken note of the statements recorded under Section 161 Cr.P.C. of the complainant as well as of other witnesses. Statement under Section 161 Cr.P.C. cannot be treated as evidence. The Court is to satisfy from the evidence produced before it, for forming opinion whether the person sought to be summoned as additional accused, is involved in the commission of the offence or not. The perusal of the FIR shows that the allegations are mainly against Subhash. In the FIR, the allegation is regarding receiving of ₹1.50 lacs from Partibha. The name of Sunita has not been mentioned in the body of FIR. The registration of the FIR is the first version and except in the head note, on the basis of which FIR was registered that it is against Sunita and Subhash, nowhere any role is mentioned qua Sunita. If later on, any statement is recorded under Section 161 Cr.P.C. or the statement is made in the Court specifying the role of Sunita, then it amounts to material improvement. Otherwise also, from the perusal of the FIR, all the allegations are against Subhash, qua whom the challan has been presented and no specific role has been mentioned/recorded in the FIR qua present petitioner Sunita. Therefore, it appears that present petitioner is not involved in the commission of the offence. Even copy of the statement of Partibha recorded in the Court has been placed on the record, which shows that along with Subhash, name of Sunita has been added.

Keeping in view the above discussion, I find that impugned order and judgment passed by the Courts below are not as per law. The powers under Section 319 Cr.P.C. should be used sparingly. Standards of

proof required for summoning additional accused, is more than prima facie

case and less than that if this evidence remained un-rebutted, it would lead to conviction.

From the record, it does not appear that present petitioner is involved in the commission of the offence. The order dated 06.01.2015 passed by learned JMIC, Rohtak summoning the petitioner as additional accused and the judgment dated 01.06.2015 passed by learned Addl. Sessions Judge, Rohtak, dismissing the revision, are hereby set aside.

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

January 10, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No