

CRM-M-26404-2015(O&M)

Date of decision: 04.08.2017

Jaideep Singh @ Lucky

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWANPresent: Mr. Rajinder Sharma, Advocate
for the petitioner.

Mr. Randeep Singh Khaira, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

This petition has been filed under Section 482 Cr.P.C. praying for quashing of the order dated 04.09.2014 (Annexure P-7) dismissing application of discharge and summoning the petitioner and the order dated 16.10.2014 (Annexure P-8) framing charge against the petitioner as well as the order dated 20.07.2015 (Annexure P-10) vide which the revision was dismissed by the Additional Sessions Judge.

The FIR No.71, dated 07.04.2014 under Sections 3, 4, 5 Immoral Traffic Act 1956 was registered against the petitioner along with three other persons. During the course of investigation, the petitioner was found innocent and was kept in column No. 2, and challan was presented against three other co-accused. Later on, the petitioner moved an application for discharging him from the case/FIR. The trial Court vide order dated 04.09.2017, dismissed the application and simultaneously, held that in view of the statement recorded under Section 161 Cr.P.C., the petitioner be summoned to face trial vide order dated 04.09.2014.

Thereafter, charges were framed against the petitioner and three other co-

accused against whom the report under Section 173 Cr.P.C. was submitted vide order dated 16.10.2014. The petitioner, thereafter, filed a revision before the Additional Sessions Judge, challenging the aforesaid two orders of summoning him to face trial as well as framing of charge. The revisional Court vide order dated 20.07.2015, dismissed the revision.

The present petition has been filed praying for quashing of the aforesaid orders passed by the trial Court as well as revisional Court. It is submitted on behalf of the petitioner that though the petitioner had inadvertently filed the application for discharge, yet while dismissing the same, there was no case before the trial Court to summon the petitioner as additional accused as no fresh evidence has come on record after submitting the report under Section 173 Cr.P.C. wherein petitioner was kept in column No.2, considering the inquiry report dated 16.04.2014 (Annexure P-5A) vide which the petitioner was found to be innocent. It is also submitted by counsel for the petitioner that in fact after framing of the charge, no prosecution evidence was recorded, on the basis of which, an application under Section 319 Cr.P.C. could be filed and summoning of the petitioner as well as framing of the charge qua him is illegal. Counsel for the petitioner submits that the impugned summoning order dated 14.09.2017 is not sustainable as the same has been passed without appreciating the provisions under Section 319 Cr.P.C.

Counsel for the respondent submits that as per allegation made in the FIR, the petitioner was found at the spot and opposed the prayer.

Admittedly, at the stage, when the order was passed only the report under Section 173 Cr.P.C. was available on record and the trial Court had no fresh evidence at that time. No statement of any prosecution witness

was recorded and no application under Section 319 Cr.P.C. was filed. Accordingly, the impugned orders passed by the Courts below are set aside.

However, it will be open for the prosecution to move an application under Section 319 Cr.P.C. to summon the petitioner after recording of any evidence or in case any fresh evidence come on record, against the petitioner.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

04.08.2017
Hemlata

Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No