

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

**Crl. Misc. No.M-44498 of 2016 (O&M)
Date of Decision: January 23, 2017**

Manjoor Singh

.....PETITIONER(s).

VERSUS

State of Haryana and another

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ivneet Singh Pabla, Advocate
for the petitioner (s).

SURINDER GUPTA, J.

Heard.

During trial of the case bearing FIR No.305 dated 19.06.2011 registered at Police Station Thanesar, Kurukshetra, an application was moved under Section 319 Code of Criminal Procedure (for short 'Cr.P.C. ') for summoning respondent No.2 as an additional accused and the same was allowed by the Chief Judicial Magistrate, Kurukshetra.

In revision, the order passed by learned Chief Judicial Magistrate, Kurukshetra was set aside by learned Additional Sessions Judge, Kurukshetra with the observation that there is no evidence against respondent No.2 and he has not been named by any of the accused.

Learned counsel for the petitioner has argued that son of complainant namely Gagandeep appeared as PW3 and has stated that accused made disclosure statement that respondent No.2 had asked them to commit theft in the house of complainant.

On perusal of the record, learned Revisional Court found that no such fact has been stated by Gagandeep in his statement under Section 161 Cr.P.C. recorded by the police.

Learned counsel for the petitioner fairly submits that there is no other evidence except the statement of Gagandeep for the purpose of summoning of respondent No.2.

On perusal of orders passed by the Chief Judicial Magistrate and the Revisional Court, I find that learned Chief Judicial Magistrate has gone wrong and committed error while allowing the application moved by the prosecution for summoning of respondent No.2 as an additional accused. While summoning a person as additional accused, the trial Court has to satisfy itself that there is more than a prima facie case against a person sought to be summoned as additional accused. Mere statement of son of complainant that some of the accused made disclosure statement that they have committed theft at the behest of respondent No.2 in the absence of any corroboration and particularly when this fact was not stated in his statement under Section 161 Cr.P.C., cannot be used as a piece of evidence against respondent No.2 to make out even a prima facie case against him.

On perusal of the order passed by the Court of revision, I find no legal or factual infirmity therein calling for any interference.

This petition has no merits.

Dismissed.

January 23, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No