

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

CRM-M-4388 of 2017

Date of Decision: February 09, 2017

Rameshwar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Anil Ghanghas, Advocate
for the petitioner.

FATEH DEEP SINGH, J.

This petition by the petitioner Rameshwar, former Sarpanch, who has sought refuge with the aid of Section 482 Cr.P.C has sought quashment of orders dated 31.01.2017 Annexure P/9 passed by the learned Additional Sessions Judge, Bhiwani, whereby, allowing the revision of the State has set aside the orders passed by the trial Court dated 11.12.2015 Annexure P/8 discharging the petitioner.

Before venturing into what has sought to be canvassed by the learned counsel for the petitioner the brief sketch is that at the Panchayat election one Madan Singh, complainant made a complaint on 24.11.2010 to the Deputy Commissioner, Bhiwani Annexure P/1 which was forwarded to ADC, Bhiwani for enquiry in which the precise allegations were that the petitioner who at the relevant time was Sarpanch in connivance with Kamlesh and Vikas illegally disbursed them pension

distributed by the State for achieving social objects. When the authorities failed to act into the matter inspite of alleged deposit of the amount by the two beneficiaries at the behest of the petitioner by virtue of Annexure P/2 the complainant knocked at the doors of Lokayukt, Haryana and after recourse to law through orders Annexure P/3 directions were issued for registration of the present FIR bearing No.84 dated 17.07.2012 under Sections 420,409,120-B IPC Police Station, Bond Kalan, District Bhiwani (now district Charkhi Dadri) against then accused Sarpanch Smt Saroj including the present petitioner. It is during the course of investigations the petitioner was found innocent and placed in column No.2 in report under Section 173 Cr.P.C. It was on the allegations of the prosecution under Section 319 Cr.P.C the petitioner was summoned as an additional accused vide orders dated 16.07.2015 Annexure P/6 by the learned trial Court Magistrate. During the course of trial learned Magistrate vide orders dated 11.12.2015 Annexure P/8 discharged the petitioner of all these accusations. The same was challenged by the State before the Revisional Court and through the impugned orders allowing revision of the State the order in question of the trial Court was set aside and the petitioner was asked to appear and face trial and that is how the petitioner is in this petition before this Court.

It is the own stand of the petitioner and the arguments of his counsel that the petitioner was initially an accused but placed in column No.2 holding him innocent during investigation and it was subsequently with the aid of Section 319 Cr.P.C he was summoned as an additional accused by virtue of orders Annexure P/6 and it is by subsequent

orders dated 11.12.2015 Annexure P/8 was discharged. The moot question that comes up at this juncture is the very maintainability of this petition. By virtue of resort to Section 227 Cr.P.C which is reproduced as below :-

“Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

and whether if a person has been summoned as an additional accused with the exercise of powers under Section 319 Cr.P.C and subsequent resort to Section 227 Cr.P.C has been well answered against the petitioner by the Hon'ble Apex Court in 2015(3) RCR (Criminal) 935 Jogendra Yadav and others vs. State of Bihar and another where their Lordships were of the view that summoning as an accused on the basis of higher standard of proof renders such an order totally infructuous and futile, if the same Court subsequently discharges the same accused by the exercise of powers under Section 227 Cr.P.C which is purely on the basis of a prima facie view and has held the exercise of power under Section 319 Cr.P.C to be on higher pedestal. More so, learned Revisional Court has rightly concluded it so that mere relying on an evidence or a findings by some administrative enquiry does not overruns the evidence collected during the investigations and what has come before the Court at the trial rather is that the learned trial Court has patently acted in a wholly illegal and perverse manner and the manner in which has sought to enable the petitioner to wriggle out of his criminal conduct so brought about during the course of investigation and the evidence before the trial Court puts a question mark on the credibility of

such a findings. Learned Additional Sessions Judge has rightly drawn the conclusion. Thus, the present petition being wholly without any merits stands dismissed in limine.

(FATEH DEEP SINGH)
JUDGE

February 09, 2017

aarti

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No