

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

CRR No.3944 of 2016

Date of decision: 3rd February, 2017

Gurjit Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sandeep Arora, Advocate for the petitioner.

Mr. Gurinderjit Singh, Dy. Advocate General, Punjab
for the respondent/State.

FATEH DEEP SINGH, J.

This is a revision petition under Section 401 Cr.P.C. against an order dated 28.07.2016 passed by the Court of learned Additional Sessions Judge, Gurdaspur whereby through the impugned order, the application under Section 319 Cr.P.C. moved by the complainant side, present petitioner, stood dismissed.

Heard Mr. Sandeep Arora, Advocate for the petitioner; Mr. Gurinderjit Singh, Dy. Advocate General, Punjab representing the State/respondent No.1 and perused the records of the case.

In case FIR No.89 dated 03.10.2013 under Sections 302/452/324/323/148/149 IPC pertaining to Police Station Kahnuwan, District Gurdaspur, the Court of learned Additional Sessions Judge, Gurdaspur vide orders dated 21.05.2014 had framed charges against seven accused

namely Ranjit Singh alias Rana, Surjit Singh alias Sahbu, Amandeep Singh alias Babba, Harjit Singh alias Jarnail Singh, Manjit Singh alias Bhutto, Harjit Singh alias Sonu and Laddi son of Ghula, the latter two present private respondents No.2 and 3 who were declared to be proclaimed offenders after the case was committed to the Court of Sessions vide orders dated 06.01.2014 by the Court of learned Judicial Magistrate 1st Class, Gurdaspur. After the trial had been initiated and certain prosecution witnesses were examined, an application under Section 319 Cr.P.C. was moved by Gurjit Singh complainant for summoning private respondents Harjit Singh alias Sonu and Laddi son of Ghula as additional accused for their complicity in the commission of the offences and which stood declined. It is during the course of this trial, as is reflected from orders dated 24.07.2014, a supplementary challan is alleged to have been filed by SI Kashmir Singh before the Court of Judicial Magistrate 1st Class, Gurdaspur holding out that after declaring these private respondents as proclaimed offenders in subsequent inquiry by DSP (Rural-I) Gurdaspur they have been held innocent and thus, supplementary challan by the aid of Section 173(8) Cr.P.C. has been filed which too was committed before the Court of Sessions Judge by the same very orders by the learned Judicial Magistrate 1st Class, Gurdaspur.

Since the learned trial Court has already taken cognizance of the offence after it framed charges and any subsequent further investigations though are not barred which is well within the domain of

investigating agency but that does not in any manner absolves and washes off the evidence, oral or documentary which forms part of the initial report under Section 173 Cr.P.C. which leads to irresistible conclusion that it is the prerogative of the trial Court to adduce evidence and to decide the culpability of the persons in the crime. Moreover, it is well settled principle of law that courts are not bound by the findings of such inquiry officer. Reliance placed on '**Rupan Deol Bajaj v. Kanwar Pal Singh Gill**' 1995(3) RCR (Criminal) 700 and it is the evidence before the Court which needs to be weighed. Thus, the Court ought not to have ventured into this misadventure by harboring on the notion as to the culpability or not of these persons and that too when these persons have already been declared as proclaimed offenders.

The very wording of Section 319 Cr.P.C. makes it emphatically clear that it is only for the purposes where a person otherwise not found having any complicity in the crime, during the course of any inquiry or trial appears from the evidence to have committed an offence who could be tried with the other persons so arrayed as accused, the Court may proceed under these provisions. However, in the present scenario, as has been even admitted by the learned State counsel, these two private respondents are already arraigned as accused and while framing charges, the trial Court has taken cognizance of the offence and therefore, having resort to the provisions of Section 319 Cr.P.C. was highly uncalled for. It would have been more apt

for the trial Court to have taken over both the challans, the earlier one as well as the supplementary one and carried on the trial against the persons who were already facing trial and it is only after if so happened that these private respondents who are proclaimed offenders appear before the Court, could have been tried as per the provisions of law by carrying on parallel proceedings as both the reports under Section 173 and 173(8) Cr.P.C. apparently qua these respondents are self-contradictory.

In the light of the same, the impugned order certainly to the mind of this Court is not only illegal and perverse but was highly undesirable and thus, is set aside for that very limited purpose. The trial Court is directed to proceed ahead into the matter as per law. However, nothing observed herein would affect the very merits of the case of the parties. The parties are directed to appear before the trial Court on the next date of hearing.

The revision petition stands disposed off accordingly.

Records be sent back forthwith.

(FATEH DEEP SINGH)
JUDGE

February 3, 2017

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No