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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: August 18, 2017
CRR No.1021 of 2017

Sunil
.....Petitioner
Versus
State of Haryana
.....Respondent
CRR No.2263 of 2017

Joni
.....Petitioner
Versus
State of Haryana
.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Pratham Sethi, Advocate for the petitioner(s).

Ms. Tanushree Gupta, DAG Haryana.

Mrs. Munisha Gandhi, Senior Advocate with
Mr. Vaibhav Sharma, Advocate &
Mr. Vinay Gandhi, Advocate for the complainant.

A.B. CHAUDHARI, J (Oral)

Both these two petitions would be disposed of by this
common order.

Rule. Heard forthwith with the consent of learned counsel
for the rival parties.

Learned counsel for the petitioner has raised two
submissions in support of these petitions. The first one is that the
finding recorded by the ASJ, Panipat that permission of the Magistrate
for further investigation before filing supplementary challan was

imperative and since the same was not obtained, the supplementary challan could not have been filed exonerating both the persons Joni and Sunil.

Learned Senior counsel for the complainant submits that legal position stated by the learned counsel for the petitioner about the permission from the Magistrate is not correct. I do not agree with the same.

In my opinion, without going into any detail in the *ratio decideni* in the case of Vinay Tyagi, findings recorded by the learned trial Court is clearly wrong and cannot be supported. In the case of Vinay Tyagi what has been held is that it is not necessary for the police to obtain permission from the Magistrate for further investigation, but it is a practice in vogue to obtain such permission from a Magistrate. In that view of the matter, the finding that the supplementary challan was required to be ignored or rejected for want of permission will have to be set aside. The same is accordingly, set aside.

The next question is about the rejection of supplementary challan filed by the prosecution exonerating both Joni and Sunil from the case. Learned trial Court has recorded the following reasons in Para 9 of its order dated 08.06.2017, for holding that the report of exoneration of both Joni and Sunil could not be accepted, which I quote here under:-

“9. *Even otherwise, report under Section 173(8) Cr.*

P.C. (supplementary challan) filed by the investigating agency exonerating accused Joni is liable to be rejected on merits. There is an eye witness account. Complainant Hukam Singh, in his complaint, has specifically stated that accused Joni was on his Bullet motorcycle and Sachin son of Khilla was sitting behind him. Joni was armed with a wooden handle of spade. Accused inflicted injuries to his son and Hari son of Parkash with their respective weapons. Another eye witness Bhajji has also named accused Joni in his statement recorded by the police under Section 161 Cr. P.C. The only ground with the investigating agency to exonerate accused Joni is that a number of villagers have furnished affidavits to the police stating that on the date of occurrence, accused Joni was present in the street in front of his house and the place of occurrence is at a large distance from the house of accused Joni. During investigation, the police recorded statements of witnesses under Section 161 Cr. P.C. and also verified the facts and thereafter, report under Section 173(2) Cr. P.C. has been submitted against accused Joni and others. There is nothing new in the report under Section 173(8) Cr. P.C. seeking exoneration of the accused Joni because villagers who have now submitted affidavits were also available to the police at the time of initial investigation. On the basis of the report under Section 173 (2) Cr. P.C., submitted by the police, accused Joni and others have already been charge-sheeted by this Court vide order dated 23.02.2017 and now the case is listed for prosecution evidence. I have gone through the authorities referred above by learned counsel for accused Joni but the same are distinguishable on facts and are of no help to him.”

Having gone through the said reasons and having heard learned counsel for the rival parties, I do not think that any other view could be taken by this Court since the observations have been made by the trial Court, prima-facie, to find out about the nature of availability of evidence. The observations made by the trial Court are, therefore, according to me, should be restricted to the order and would not influence the trial Court while trying the case. Prima-facie, I also agree with the trial Court for the reasons stated in Para 9 of the order of the trial Court for rejecting the application for discharge of both Sunil and Joni.

In that view of the matter, both these petitions, i.e. CRR No.1021 of 2017 and CRR No.2263 of 2017 are dismissed for the reasons above.

**(A.B. CHAUDHARI)
JUDGE**

August 18, 2017
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No