

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

CRR No.1740 of 2017 (O&M)
Date of Decision: December 18, 2017

Ramesh Pehlwan

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.B.K.Bagri, Advocate
for the petitioner.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present revision petition has been filed by petitioner Ramesh Pehlwan against respondent State of Haryana, challenging the impugned order dated 30.03.2017 passed by learned Addl. Sessions Judge, Jhajjar, vide which the petitioner was summoned under Section 319 Cr.P.C.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that during the pendency of the trial in case FIR No.101 dated 15.02.2016 under Section 20 of the NDPS Act, registered at Police Station, Jhajjar, an application was filed by the

prosecution for summoning Ramesh Pehlwan as additional accused under Section 319 Cr.P.C. Notice has been issued to accused Ashok Shah, who was already facing trial and he made no objection to the said application. The brief facts of the case as noted down by learned Addl. Sessions Judge, Jhajjar, in the impugned order are as under:-

“3. The factual matrix facts of the case is that the ld. Public Prosecutor for the State submitted that this case was pending for prosecution evidence on 16.01.2017. During the prosecution evidence, that PW-1 ASI Anil Kumar. PW-4 PSI Virender, PW-7 Ct. Nitish Kumar and PW-8 ASI Pankaj appeared for deposition of their statement on behalf of prosecution. In their statement they specifically deposed that Ramesh Pehlwan S/o Mahi Lal R/o Village Bamla District Bhiwani was involved in this case as disclosed by accused Ashok Shah. IO declared innocent him in the case diary and not filed any challan against him. The Ld. Public Prosecution for the State further submitted that present accused Ashok Shah is resident of Bihar and he was found in possession 24 kg 500 gm charas. In his disclosure statement he deposed that he has to supply this charas i.e. 24 KG 500 GM to Ramesh Pehlwan S/o Mahi Lal, caste Jaat, R/o village Bamla District Bhiwani. Ld. Public Prosecution for the state further prayed that he be summoned as additional accused as he played active role being matter mind of the case.

In reply to the above said application SHO Daya Chand, Jhajjar at present Bri and ASI Ramesh have filed reply and stated that accused Ashok Shah was arrested by SIT Jhajjar. He was having 24 Kg 500 gms Charas in his possession and he disclosed that he has to supply this charas i.e. 24 Kg 500 gms to Ramesh Pehlwan S/o Mahi Lal R/o Village Bamla District Bhiwani. In pursuance of the disclosure made by accused Ashok Shah, on 25.04.2016 ASI Ramesh Kumar moved an application for issuing the warrant of arrest against Ramesh Pehlwan S/o Mahi Lal R/o Village Bamla District Bhiwani. The warrant of arrest were issued on 25.04.2016 for 09.05.2016 and further investigation was handed over to ASI Satveer, Police Post Jhajjar. The Police has got joined investigation to Balbir Singh S/o Bhalle Singh, Ramphal S/o Dhoop Singh, Jagdish S/o Umed Singh, Diwan S/o Ramanand, Rajbir S/o Jai Lal, Sukhbir S/o Bhanaram, Raghbir S/o Phool Singh, Om Parkash S/o Dhool Singh, Veer Singh S/o Hardeva, Tasvir S/o Dhool Singh, Hosiyar S/o Chandu Ram, Chandgi Ram S/o Ram Saroop, Satbir S/o Jitta Ram, Pardeep S/o Ram Saroop. All the resident of village Bamla and found that Ramesh Pehlwan S/o Mahi Lal R/o Village Bamla District

Bhiwani is innocent.”

Learned Addl. Sessions Judge, Jhajjar, vide impugned order dated 30.03.2017, accepted the application and summoned present petitioner Ramesh Pehlwan as additional accused to face trial.

From the record, I find that charas weighing 24 kgs. 500 grams has been recovered from accused Ashok Shah, who has already been challaned by the police. During investigation, he has made disclosure statement that he has to supply charas weighing 24 kgs. 500 grams to Ramesh Pehlwan.

At the time of arguments, it has been brought to the notice of this Court by learned State counsel that the official PWs have deposed regarding this disclosure statement and the police officials are the witnesses to this disclosure statement. The disclosure statement given by the accused during investigation, at the most, can be used for nominating other accused and to investigate against that person nominated by the main accused but there is no evidentiary value of the disclosure statement of the accused given to the police during investigation. This disclosure statement, even if taken as confession, by the accused and also nominating co-accused, is inadmissible in evidence under Section 25 of the Evidence Act as it is a statement given to the police by the accused in police custody.

When specifically asked to learned State counsel as to whether there is any other evidence against the petitioner, learned State counsel stated that there is no other evidence except the disclosure statement given by the main accused. There are no call details between the present petitioner and main accused during the relevant period to connect him with

the crime nor there is any other evidence on record to show that after the nomination of the present petitioner during investigation, any raid has been conducted or any charas etc. has been recovered from the petitioner.

Merely, on the basis of disclosure statement of the main accused given to the police, which is inadmissible in evidence, present petitioner cannot be summoned. The impugned order dated 30.03.2017 passed by learned Addl. Sessions Judge, Jhajjar, is illegal, not as per evidence and law and the same is set aside.

Therefore, finding merit in the present revision petition, the same is allowed.

December 18, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No