

CRR-3601-2017 (O & M)

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

CRR-3601-2017 (O & M)
Date of Decision: 04.10.2017

Amarpal

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Abhinav Sood, Advocate,
for the petitioner.

INDERJIT SINGH, J.

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This is an application for condonation of delay of 141 days in filing the revision.

Heard.

For the reasons, mentioned in the application, the same is allowed and delay of 141 days in filing the revision is condoned.

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Petitioner-Amarpal has filed this revision against respondents- State of Haryana and Kaptan Thekedar, under Section 401 of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.'), for quashing of order dated 08.02.2017 passed by learned Additional Sessions Judge, Palwal whereby application under Section 319 Cr.P.C. filed by complainant-Amarpal for summoning of respondent No.2-Kaptan Thekedar, as additional accused,

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was dismissed.

I have heard learned counsel for the petitioner and perused the record.

From the record, I find that during the pendency of trial against Kapil etc. FIR No.135 dated 04.05.2016, registered at Police Station Chandhut, District Palwal, under Sections 323, 307, 506, 120-B and 34 of the Indian Penal Code and Section 25 of the Arms Act, 1959, complainant-Amarpal filed an application under Section 319 Cr.P.C. to summon respondent No.2-Kaptan Thekedar, as additional accused.

Learned Additional Sessions Judge, Palwal, after going through the evidence, dismissed the application under Section 319 Cr.P.C. vide impugned order dated 08.02.2017.

Aggrieved from the said order, the present revision petition has been filed.

From the record, I find that challan was presented against Kapil etc. and at that time, it was written that arrest of Kaptan Thekedar is pending, but subsequently, supplementary challan was filed under Section 173 (8) Cr.P.C. mentioning that he was found innocent. The prosecution examined only complainant-Amarpal and one Rohtas, who have deposed that Kaptan Thekedar wanted the complainant to leave liquor vend so he had sent accused facing trial to kill him. It is also mentioned that four-five days prior, Kaptan Thekedar had come with three-four persons, who threatened the complainant. Learned Additional Sessions Judge, Palwal, gave a finding that admittedly, the accused facing the trial, are not those

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three-four persons, who had come alongwith Kaptan Thekedar. The Investigating Officer has not found any material to connect Kaptan Thekedar with the crime and there is no reason to disbelieve it.

Learned counsel for the petitioner has argued before this Court that the accused made the disclosure statement to the police attributing connivance or abetment to the commission of offence etc. by Kaptan Thekedar.

However, at the time of arguments, learned counsel for the petitioner has not pointed out any other evidence except the oral statements of complainant-Amarpal and one Rohtas that the occurrence took place on behalf of Kaptan Thekedar to whom the complainant wants to summon. Admittedly, Kaptan Thekedar was not present at the spot at the time of occurrence. Accused-Kapil against whom the challan has been presented, had not come with Kaptan Thekedar three-four days prior to the occurrence. Complainant-injured is a salesman at liquor-vend of Rohtas @ Rodhi. There is no allegation that Kaptan Thekedar had any motive or enmity against Rohtas @ Rodhi; or that Kaptan Thekedar wanted that liquor vend etc.; or that any litigation is pending between them. No motive is shown for causing injury to the employee of Rohtas @ Rodhi. It is in the statement of complainant-Amarpal (Annexure P-2), copy of which is annexed herewith as Annexure P-2 that four-five days earlier to the day of occurrence, one Kaptan Thekedar came to the liquor-vend alongwith three-four persons. He asked his name and then told him that he was Kaptan Thekedar from Chhanisa and he should leave the liquor-vend of Rodhi. He also warned

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him to go to his native village or otherwise he would kill him. This evidence shows that Kaptan Thekedar was not knowing the injured. Perusal of the statement of PW 1 Amarpal does not show that Kaptan Thekedar has any enmity or motive against him or Rodhi. The disclosure statement which is mainly relied upon by learned counsel for the petitioner, is inadmissible in evidence being the statement given by the accused to the police during the custody and hit under Section 25 of the Indian Evidence Act, 1872. Therefore, at this stage, there is no cogent evidence on record to connect respondent No.2- Kaptan Thekedar with the crime.

From the above discussion, I find that the impugned order passed by learned Additional Sessions Judge is correct, as per evidence and law. At this stage, it does not appear to this Court that respondent No.2- Kaptan Thekedar to whom the complainant wants to summon as additional accused, is involved in the occurrence. In no way, it can be held that learned Additional Sessions Judge has committed any illegality while passing the impugned order.

Therefore, finding no merit in the present revision, the same is dismissed.

04.10.2017
parveen kumar

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No