

252 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33402-2018(O&M)

Date of decision:09.10.2018

Sewa Singh

...Petitioner

Versus

Amandeep and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Pardeep Singh Poonia, Advocate
for the petitioner.

Mr. Jitesh Bhardwaj, Advocate
for respondents No.1 and 2.

Mr. Karan Sharma, AAG, Haryana
for respondent No.3.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition seeking quashing of order dated 19.05.2018 (Annexure P-5) passed by the Additional Sessions Judge, Hisar whereby he had affirmed the order dated 07.02.2017 (Annexure P-4) passed by the Judicial Magistrate 1st Class, Hansi, declining to summon the respondents No.1 and 2; by exercising power under Section 319 of Cr.P.C.

Learned counsel for the petitioner has submitted that there are specific allegations against respondents No.1 and 2. Respondent No.2 is alleged in the FIR itself to have raised a *lalkara*. Respondent No.1 is alleged to have caused injuries with *lathi* to the petitioner. The petitioner has appeared as a witness before the trial Court also. He has corroborated his allegations, as delineated in the FIR, before the trial Court as well.

Therefore, it is contended by the counsel; that there is sufficient material

before the Court to justify the summoning of respondents No.1 and 2 as additional accused; to face the trial; by exercising powers under Section 319 of Cr.P.C.

On the other hand, learned counsel for respondents No.1 and 2 has submitted that the police had investigated the case in the right earnest. After thoroughly investigating the case, the police had not found any material justifying arraying the respondents No.1 and 2 as the accused to face the trial. It is further contended by the counsel that merely because the complainant has repeated ipse dixit of the FIR, while appearing as a witness before the Court, would not in itself be sufficient for the trial Court to pass an order of summoning of additional accused in exercise of power under Section 319 of Cr.P.C. Hence, the trial Court had rightly not found sufficient material for exercising power under Section 319 of Cr.P.C. Therefore, the application has rightly been dismissed. Still further, counsel for respondents No.1 & 2 has submitted that the petitioner had already availed the remedy of revision before the Court of Additional Sessions Judge, hence, the petition challenging the order passed by Revisional Court would not be maintainable; because it would tantamount filing second revision by the same party, which is prohibited by Section 397(3) of Cr.P.C. Hence, the present petition deserves to be dismissed.

Learned counsel for the State submits that the police had rightly investigated the case and had filed the report under Section 173 Cr.P.C. against the appropriate accused.

Having heard learned counsel for the parties and perusing the record, this Court finds that the learned Courts below have not committed

any illegality or irregularity while passing the impugned orders. Of course, the learned counsel for the petitioner has highlighted the allegations levelled against the private respondents qua their participation in the alleged crime and those allegations have been repeated by complainant while appearing as a witness before the Court as well, however, the trial Court have not found the same to be sufficient for summoning the additional accused. It is well settled law that mere fact that the complainant repeats the ipse dixit of the FIR, while appearing as a witness, may not be sufficient material to summon the additional accused. In any case, keeping in view the entire material, facts and circumstances of the case, it is for the trial Court to arrive at a reasonable conclusion as to whether the additional accused is to be summoned or not. It is the discretion conferred upon the trial Court and not a bounden duty. The trial Court has rightly not found the material in this case worth summoning the additional accused. It is the satisfaction of the trial Court, ultimately, which is relevant for the purpose of exercising powers under Section 319 of Cr.P.C. In the present case, the satisfaction of the trial Court have also been upheld by the Revisional Court while adjudicating upon the 'legality' or 'propriety' of the order passed by the trial Court. Therefore, no further interference in the present case is required.

This Court also finds the argument of learned counsel for respondents No.1 and 2, that the Court should not interfere in the case because it is in the nature of second revision, to be legally sustainable. This Court has already considered this aspect in case of **CRM-M-30350-2018, Sudesh and others vs. State of Haryana and another, decided on 02.08.2018** and held as under:-

“So far as the present petition is concerned, this petition has been filed for invoking power of the High Court under Section 482 Cr.P.C. A bare perusal of Section 482 Cr.P.C shows that the power under Section 482 Cr.P.C can be invoked for three purposes, namely, for giving effect to the orders passed under this Court, for preventing the abuse of the process of the Court and to meet the ends of justice. In the present case, the prayer of the petitioners is not for giving any effect to any order passed by the Court. Therefore, the first eventuality prescribed under Section 482 Cr.P.C is not at all attracted. Still further, by any means, an order passed by a Court of competent jurisdiction and continuation thereof; cannot be branded as an abuse of the process of Court; unless it is alleged and shown to the High Court that the Courts below had acted for irrelevant reasons or for extraneous considerations. Needless to say that sufficiency of reasons is not to be gone into after the revisional Court. It is not even the allegation of the petitioners in this case that orders are passed by Court below; for irrelevant or extraneous considerations. So far as the third ingredient of Section 482 Cr.P.C is concerned, this Court is not supposed to go into 'legality' and 'propriety' of the order passed by the trial Court. Section 397 (3) of Cr.P.C prohibits second revision by a party. Under Section 397(1), the Revisional Court is authorised to see 'legality' and 'propriety' of the order passed by the Court. Since second revision by the same party is prohibited under Section 397(3), therefore, any argument on 'legality' or 'propriety' of an order passed by the Court below, ordinarily, is not to be appreciated in proceedings under Section 482 Cr.P.C, unless it is shown, at the macro level, that such an order has resulted from considerations which were totally alien to the process of the Court or have produced incomprehensibly absurd result and, therefore, have resulted in defeating the ends of justice itself. What cannot be done directly, cannot be done indirectly as well. In the present case,

except to argue for re-appreciation of the material before the trial Court, there is not even a submission or an allegation regarding any aberration in the process adopted by the Courts for passing the impugned orders. Therefore, power under Section 482 Cr.P.C cannot be exercised by this Court to re-appreciate the same material, which was available before the Courts below and which have been duly appreciated by the Courts below. ”

In the present case, this Court does not find any extraordinary circumstances or aberration of process of the Court justifying interference by this Court in exercise of its powers under Section 482 Cr.P.C.

In view of the above, finding no merit in the present petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

09.10.2018
Hemlata

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No