

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-46181 of 2016

Date of decision: 28.09.2018

Jaswinder Singh

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sudhir Sharma, Advocate
for the petitioner.

Mr. Ramandeep Sandhu, Sr. DAG, Punjab.

Mr. D.S. Malwai, Advocate
for respondent no. 2.

SURINDER GUPTA, J.

The petitioner has sought quashing of order dated 08.12.2016 passed by Revisional Court of learned Additional Sessions Judge, Sangrur whereby he has been summoned as additional accused on application of prosecution filed under Section 319 Cr.P.C.

Brief Facts:-

2. FIR No. 147 dated 06.09.2011 was registered on the statement of Harpal Singh son of Mukhtiar Singh, wherein he has stated that on 06.09.2011, motorcycle of Inderjit Singh son of Harmail Singh was hit from behind by the tractor bearing no. PB-13K-4503, which was being driven by Jaswinder Singh son of Kulwant Singh. The occurrence was witnessed by complainant, who was going behind Inderjit Singh on separate motorcycle with Sukhwinder Singh. When they were taking care of the injured, Jaswinder Singh succeeded in fleeing away from the spot. Inderjit Singh was taken to the hospital, where he died after sometime. As per

tractor by Jaswinder Singh.

3. After investigation police presented the challan against Sher Singh son of Darbara Singh with the report that it has come during investigation that the tractor in question was being driven by Sher Singh and not by Jaswinder Singh.

4. Complainant moved application under Section 319 Cr.P.C. for summoning of Jaswinder Singh as accused, which was declined by learned Magistrate, Sangrur vide order dated 08.05.2015. While declining the application learned Magistrate relied on defence taken by Jaswinder Singh in petition filed before the Motor Accident Claims Tribunal that at the time of accident he had gone to State Bank of Patiala, Main Branch, Sangrur. In revision against the order passed by learned Magistrate, learned Additional Sessions Judge, Sangrur vide order dated 17.07.2015 ordered summoning of Jaswinder Singh as accused to face trial alongwith Sher Singh, who had been challaned by the police.

5. Jaswinder Singh filed petition (CRM-M-29359-2015) under Section 482 Cr.P.C. before this Court which was allowed on the ground that before summoning Jaswinder Singh as additional accused he had not been afforded opportunity of being heard by the Court of Revision. The matter was remanded with direction to implead Jaswinder Singh as party in the revision and pass fresh order after affording him opportunity of hearing to him.

6. Learned Additional Sessions Judge, Sangrur vide order dated 08.12.2016 again allowed the revision with observations in para 13 as follows:-

“13. The case of the complainant, from the very beginning, is

that the accident was caused by Jaswinder Singh son of Kulwant Singh. The police investigated the case and an enquiry was also marked and held in case by the police official. The complainant was never associated in that enquiry but Jaswinder Singh was kept in column no. 2 by declaring him innocent. Evidence is there on the file sufficient for the trial of Jaswinder Singh as an accused. Thus, having examined the order, the same suffers from illegality muchless irregularity or perversity warranting interference by this Court. Hence, the revision petition is allowed and the ld. Trial Court is directed to summon Jaswinder Singh as an accused and to try him.....”

7. Learned counsel for the petitioner has argued that trial of the criminal case pending before learned Magistrate is complete. Sher Singh has been acquitted, as such, there is no occasion at this stage to summon Jaswinder Singh as additional accused. The police during investigation has found that it was Sher Singh, who was driving the tractor and Jaswinder Singh was cited as prosecution witness. The claim petition filed before Motor Accident Claims Tribunal claiming compensation for death of Inderjit Singh in the motor vehicle accident due to rash and negligent driving of tractor by Jaswinder Singh has also been dismissed, as such, the Court of Revision has committed grave error by ordering summoning of Jaswinder Singh as additional accused to face trial.

8. In support of his case, he has relied on observations in cases of **Harjinder Singh vs. State of Haryana and others, 2013 (1) RCR (Criminal) 1038**, **Rakesh Kumar vs. State of Haryana and others, 2013 (3)**

RCR (Criminal) 913 and ***Tarsem Singh vs. State of Punjab and others, 2013 (3) RCR (Criminal) 585***, wherein a coordinate Bench of this Court has observed that after conclusion of trial a person cannot be summoned as additional accused to face trial.

9. Learned counsel for the complainant has argued that it is a case where complainant from the very beginning is claiming that the tractor involved in the accident was being driven by Jaswinder Singh and the accident was caused due to his rash and negligent driving. During investigation, the police without any reason to discard statements of complainant and other eye-witness, produced challan against one Sher Singh and Jaswinder Singh in order to prove that he is innocent was cited as prosecution witness alongwith three other witnesses to support his contention. Even before the trial Court, complainant and eye-witness deposed that the accident was caused by petitioner-Jaswinder Singh and not by Sher Singh. They have specifically stated that Sher Singh was not driving the vehicle on the day of occurrence and was seen by them for the first time in Court.

10. Learned trial Court while relying on statements of complainant and eye-witness acquitted Sher Singh with observations as follows:-

“22.In the present case, it was consistently the case of the informant from the inception of the investigation in his statement to the police as well in his statement in the Court that it was Jaswinder Singh who was driving the offending vehicle on the day of the accident. However, ignoring the statements of the eye-witnesses, which were quite corroborative of each other, the investigating

agency, for the reasons best known to it, has ignored to implead Jaswinder Singh as an accused, rather, it has declared him as innocent. In fact, the investigating agency is required to formulate only a prima facie satisfaction regarding the identity of the accused; it is not required to give a judgment regarding the involvement of a particular person. The investigating agency seems to have crossed the fine line of distinction between the duties of the various authorities appointed by law and seems to have transgressed upon the domain of the law courts while giving an affirmative determination regarding non-involvement of Jaswinder Singh in the accident. There is no reason assigned by the investigating agency as to how Jaswinder Singh has been found innocent in the facts and circumstances of the present case. Similarly, even though none of the witnesses have mentioned the name of Sher Singh as driver of the offending vehicle in their statements under Section 161 Cr.P.C. suffered to the police, yet, ignoring the statements of the eye-witnesses, the investigation officer, without assigning any reason, has impleaded Sher Singh as an accused in this case. It was for these reasons, on account of the defective investigation of the present case, that the weakness has occurred in the case of the prosecution in the court in view of the fact that all the star witnesses of the prosecution have categorically

stated that Sher Singh accused was not driving the offending vehicle on the day of the accident. Therefore, given the inherent weakness in the case of the prosecution, in view of its weak roots, it was bound to fail, on being put to the scrutiny of evidence, during the trial conducted before the law court.”

11. It has been admitted that legal heirs of deceased-Inderjit Singh filed claim petition under Section 166 of the Motor Vehicles Act with their plea that the accident was caused by Jaswinder Singh, where also they failed because of the police report in challan.

12. Now a question, which arises for consideration, is as to whether after completion of trial and acquittal of accused-Sher Singh, who was charge-sheeted, petitioner can be summoned under Section 319 Cr.P.C. On this issue a reference can be made to the observations of Hon'ble Division Bench of this Court in case of **Razak vs. State of Haryana and others, 2016 (1) Law Herald 409**, wherein it was observed as follows:-

“14-15. Admittedly, the application for summoning of respondents No.2 to 5 was filed during pendency of the trial rather immediately after examination of the prosecutrix was completed on 16.05.2013. The prosecutrix was the first witness examined in the case. The question that, therefore, arises for consideration is whether the respondents can escape their liability to face criminal proceedings merely because the trial against the accused, already before the Court, stands concluded. As per settled legal position, order allowing an application

*under Section 319 Cr.P.C. would relate back to the date of application. A serious prejudice is likely to be caused to the interest of justice as well as to the rights of the complainant in case the plea of the respondents is accepted that as the trial against Sehju and others already stands concluded, they can not be subject to criminal proceedings even if the application under Section 319 Cr.P.C. is meritorious. This apart, such a finding can well be exploited by unscrupulous prosecutors or vested interests by keeping the application pending till the trial is concluded. Even otherwise, the question is no longer res intergra. The Hon'ble Supreme Court of India in **Babubhai Bhimabhai Bokhiria and another Vs. State of Gujarat and others, 2014(1) RCR (Criminal) 542** after referring to the judgment in **Shashikant Singh v. Tarkeshwar Singh and Anr., (2002)5 SCC 738, Rajendra Singh v. State of U.P. & Anr., (2007)7 SCC 378** has held in para 15, as follows:-*

“15. In the light of the above two decisions rendered by co-ordinate Benches of this Court, we have no hesitation in holding that even if the addition of the petitioner Babubhai Bhimabhai Bokhiria is held to be justified by the Constitution Bench of this Court, the mere fact that the trial of the remaining accused has already concluded, would not prevent the prosecution of the petitioner

for the offences for which he has been summoned by the trial Court."

16. *In this view of the matter, we are of the considered opinion that an additional accused cannot be exonerated on the technical ground that the trial of the remaining accused has already been concluded."*

13. The judgment cited by learned counsel for the petitioner in case of ***Rakesh Kumar (supra)*** was also considered and it was observed that opinion in that case was on its own peculiar facts and does not lay down a general proposition of law. Hon'ble Apex Court in case of ***Babubhai Bhimabhai Bokhiria and another vs. State of Gujarat and others, 2013 (9) SCC 500*** has observed that "*the mere fact that the trial of the remaining accused has already concluded, would not prevent the prosecution of the petitioner for the offences for which he has been summoned by the trial Court.*"

14. In view of law laid down by Hon'ble Division Bench of this Court and Hon'ble Apex Court as discussed above, observations in cases by Single Bench of this Court are of no help to the petitioner.

15. Much stress has been laid on the fact that police has found the petitioner as innocent and to prove this fact has cited him as witness of the prosecution. In this case version of complainant from the very beginning is that vehicle in question was being driven by the petitioner. They have stuck to their statements during trial and even in the petition filed before the Motor Accident Claims Tribunal. In final report submitted in Court police has cited three witnesses, namely, Pargat Singh, Gurmit Singh and Satvir Singh to support contention of the petitioner that he was not driving the

vehicle. It is really a strange circumstance that the police instead of citing witnesses to prove that the offence was committed by Sher Singh, who was found guilty during investigation, had cited witnesses to prove that petitioner was innocent.

16. Learned Additional Sessions Judge, Sangrur has rightly taken note of facts on record while observing that evidence on record is sufficient for trial of Jaswinder Singh as accused and I find no reason to differ with the observation of learned Court of Revision below. It is a case where the complainant and an eye-witness are alleging that accident was caused due to rash and negligent driving of a particular person but the police is presenting challan against some other person discarding statements of complainant and eye-witness. The person challaned by the police were acquitted because the complainant and eye-witness have stuck to their statements before police and the prosecution failed to produce evidence that the offending vehicle in fact was being driving by Sher Singh at the time of accident.

17. Keeping in view above facts, I find no merits in this petition and the same is dismissed.

18. Learned trial Court is directed to take up the file on its board and proceed with the trial of petitioner expeditiously.

September 28, 2018

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No