

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-8829-2015

Date of decision: 18.09.2018

Gyan Prakash

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Ajay Jain, Advocate for the petitioner.

Mr. Yashwinder Singh, DAG, Haryana.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., prayer has been made for quashing/setting aside order dated 16.02.2015 (Annexure P-1) of the Sub Divisional Judicial Magistrate, Naraingarh, framing charge against the petitioner under Section 411 IPC and order dated 05.03.2015 (Annexure P-2) of the Revisional Court, whereby the order Annexure P-1 of the trial Court was affirmed dismissing the revision filed by the petitioner.

Briefly, on 11.07.2007, a truck bearing registration No. HR-37-B-0469, owned by co-accused Nishan Singh, driven by co-accused Mousam, after loading 1578 boxes of insecticides started from Mohali to Pune (Maharashtra). However on 15.07.2007, aforesaid driver of the

truck, namely; Mousam got recorded his statement to the police that in the early morning of 12/13.07.2007, one black coloured 'Bolero' chased and stopped them near village Kakar Majra on Panchkula Shahbad road and 7-8 persons alighted from it and overpowered them with the help of country made pistols. After covering his eyes with cloth, they kidnapped him and made him to sit in 'Bolero'. After covering some distance, threw him in sugarcane fields. The unknown assailants also snatched ₹ 6000/- from him.

On the basis of above statement of Mousam, FIR No. 72 dated 15.07.2007, under Section 395 IPC at Police Station Shehzadpur, against unknown assailants. During investigation, the aforesaid truck loaded with insecticides was taken into possession. It revealed that complainant-Mousam, his owner Nishan Singh, in conspiracy with petitioner-Gyan Parkash and one other accused, namely; Nepal Singh, with an intention to misappropriate the goods loaded in the truck, cooked up a false story of dacoity. Consequently, aforesaid FIR was converted into offence punishable under Sections 406, 407 and 120-B IPC, while deleting Section 395 IPC.

On completion of investigation, final report under Section 173(2) Cr.P.C. was filed against the petitioner and his three accomplice, under the aforesaid sections. On conclusion of trial, when the case was fixed for pronouncement of judgment on 09.02.2015, the learned Public Prosecutor moved application under Section 216 Cr.P.C., to charge-sheet the petitioner and his accomplice under Section 411 IPC also, in addition

to the offences for which they faced trial. The same was allowed vide impugned order dated 16.02.2015 (Annexure P-1).

Being aggrieved, the petitioner approached the Revisional Court, but remained un-successful, as his revision was dismissed vide order dated 05.03.2015 (Annexure P-2).

Learned counsel for the petitioner *inter alia* contends that there is no iota of evidence against the petitioner that he was ever entrusted or found in possession of the alleged stolen articles. The investigating agency was not even sure as to what was the alleged stolen article which was recovered, from the offending vehicle, because at one point of time, the police described alleged offending vehicle as 'Bolero' and at another stage, it has disclosed its description as 'Scorpio'. Both the above models have distinguished features, being not identical to each other. Therefore, a false case has been foisted upon the petitioner. None of the prosecution witnesses during trial, including the police officials have testified about the complicity of petitioner in the commission of offence under Section 411 IPC. The petitioner has falsely been implicated on the ground that the vehicle from which the alleged stolen article was recovered is owned by the petitioner. The trial Court has wrongly accepted the application under Section 216 Cr.P.C., filed by learned Public Prosecutor, for addition of charge under Section 411 IPC.

On the other hand, learned State counsel vehemently opposing the above submission of learned counsel for the petitioner pleaded the legality and validity of the impugned order.

Having given thoughtful consideration to the rival submissions of learned counsel for both the side, this Court finds merit in the instant petition for the reasons to follow:-

There is no iota of evidence on record showing complicity of the petitioner in the alleged offence for which he has been ordered to be charged with nor he was ever entrusted any stolen article or the same was ever recovered from him. Addition of charge under Section 411 IPC, was sought by learned Public Prosecutor, on the ground that vehicle found involved in the commission of crime is owned by the petitioner. However, the said ground is not sufficient to frame additional charge under Section 411 IPC against the petitioner for the reason that the investigating agency itself is doubtful about the identity of the vehicle owned by the petitioner or was found involved in the alleged commission of crime.

More so, application under Section 216 Cr.P.C., after conclusion of trial, but just before pronouncement of final judgment at the fag end of trial without disclosing any justifiable reason cannot be said to be maintainable. Even the learned State counsel during course of arguments before this Court could not point out any evidence that has come against the petitioner during trial. Therefore, both the Courts below have erred in allowing the application of the prosecution, without specifically asking it, as to how addition of charge under Section 411 IPC would be justified.

Perusal of the impugned orders Annexure P-1 of the trial

Court and that of Revisional Court Annexure P-2 shows that they have not given any sound reasoning for framing of additional charge against the petitioner under Section 411 IPC. Application has been allowed, simply on the ground that charge can be altered at any stage of the proceedings, ignoring the fact that no recovery was effected from the petitioner.

The Revisional Court has dismissed the revision of the petitioner without application of mind simply because the petitioner did not raise any objection in considering the evidence already led by the prosecution against him, even after amendment of charge. It was earnest duty of both the Courts below to look into the entire evidence adduced by prosecution on record to form an firm opinion as to whether application of the prosecution under Section 216 Cr.P.C., at the fag end of trial few minutes before pronouncement of judgment was legally maintainable or justifiable, but the same has not been done.

Both the Courts below have failed to appreciate that filing of application under Section 216 Cr.P.C., after 8 years of facing protracted trial by the petitioner, was not justified.

It is pertinent to mention here that the petitioner was never afforded opportunity by the trial Court to raise grouse for addition of charge against him under Section 411 Cr.P.C., which was framed on the same day immediately after acceptance of the application of prosecution in this respect, which is also, in the considered opinion of this Court, is a harsh step. The petitioner is resident of Delhi and is facing protracted

trial at Naraingarh since the year 2007, which is very disturbing.

Consequently, in view of discussion made above, the instant petition is accepted. The orders of both the Courts below dated 16.02.2015 and 05.3.2015 (Annexures P-1 and P-2, respectively) are set aside qua the petitioner only and the same would remain in force against co-accused of the petitioner as they had not challenged the same.

September 18, 2018

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No