

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

Crl. Misc. No.M-7028 of 2017

Date of Decision: 09.03.2018

Anoop Rohera and others

.....Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Ms. Sunita Nambiar, Advocate, for the petitioners.
Mr. Ravi Partap, AAG, Haryana.
Mr. Roopansh Purohit, Advocate, for respondent no.2.

Amol Rattan Singh, J. (Oral)

By this petition, the petitioners have challenged the order of the learned Additional Sessions Judge, Gurgaon, passed in a revision petition filed by respondent no.2, who is one of the accused in the FIR in question, that petition being against the order of the learned JMIC, Gurgaon, dated 27.04.2016, by which an application filed by the prosecution under Section 216 Cr.P.C, seeking addition of a charge for the commission of an offence punishable under Section 201 IPC, was allowed, the accused earlier having been charged for the commission of offences punishable under Sections 325, 324, 341 and 506 IPC, all read with Section 34 IPC. The learned JMIC, vide his order dated 27.04.2016 (Annexure P-3), dismissed the application, holding that as no recovery was effected from the possession of the accused,

therefore Section 201 IPC was rightly not added, though earlier a disclosure statement of accused Kamal Yadav had been recorded, wherein he had stated that he had thrown away the '*danda*' used in the crime.

The learned Addl. Sessions Judge, while reversing that order vide the order impugned before this Court, Annexure P-5, has held that there was a disclosure statement of accused Kamal Balhara on 21.05.2014, to the effect that he had thrown away the knife during the night and that a perusal of the medical documents on record showed that there were corresponding injuries (made by a knife) on the chest of the complainant, Arun Dhull, which as per the doctors' opinion, had been caused with a sharp-edged weapon. Thus, it was held that there was not only the disclosure statement regarding the use of the weapon, but also supporting statements and other evidence on record as well.

Thereafter discussing the ingredients of Section 201 IPC, it was held that a charge for the commission of an offence punishable under Section 201 IPC was at least prima facie made out, and the trial court had therefore erred in dismissing the aforesaid application, with even earlier, the said provision (Section 201), having been mentioned in an order dated 22.05.2014 passed by the trial court (in respect of the bail application filed by the accused), with the commission of an offence punishable under the aforesaid provision having also been stated in the reply filed by the State, to that application.

Having considered the orders of both learned Courts, I find myself in complete agreement with the order of learned Additional Sessions Judge. Section 201 IPC postulates that whoever has knowledge or reason to

believe that an offence has been committed and causes any evidence of the commission of that offence to disappear, is punishable for various terms of imprisonment, depending on the offence committed, in respect of which the evidence has been caused to disappear.

Thus, the essential ingredient of Section 201 IPC is that the accused has caused evidence to disappear, relatable to the crime that he or anyone else, is accused of having committed.

In the present case, the allegation being that the petitioners in furtherance of common intention, had committed offences punishable under Sections 325, 324, 341 and 506 IPC and one of them, i.e. Kamal Balhara (petitioner no.2), had thrown away the knife with which wounds were allegedly inflicted upon the victim, in my opinion too, a charge in respect of the commission of an offence punishable under Section 201 IPC would be made out, and with Section 34 being added to all the charges already framed against the petitioners, by the trial Court, thereby showing a common intention, I see no reason why they would all not be also liable to be charged with the commission of the aforesaid offence.

Naturally, whether all or any of the petitioners are actually guilty of having committed the offence, (as also any of the other offences), would be decided by the trial court wholly on the basis of the evidence led before it.

It needs to be noticed that learned counsel has not refuted that it was not recorded by the police that it was not a knife but a *danda* that was thrown away by petitioner no.2, (as is stated to have been recorded on 21.05.2014).

Consequently, in my opinion, no error can be found in the

impugned order of the learned Addl. Sessions Judge, for the reasons given in detail by that Court, referred to hereinabove.

Hence, finding no merit in the petition, it is dismissed.

09.03.2018
vcgarg/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes

Whether reportable: no