

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 2083 of 2016 (O&M)

Date of decision : 18.1.2018

...

Jai Kumar

.....Petitioner

vs.

State of Haryana and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. J.S. Saneta, Advocate for the petitioner

Mr. Neeraj Poswal, Assistant Advocate General,
Haryana.

Mr. Yashwant Singh Rathore, Advocate for respondent No.2.

...

H. S. Madaan, J.

This revision petition is directed against order dated 28.4.2016 passed by Additional Sessions Judge, Panipat, vide which he had dismissed application under Section 319 Cr.P.C. for summoning of Parveen @ Mahesh as additional accused.

Briefly stated, facts of the case as per prosecution story are that FIR in question was recorded at the instance of Jai Kumar-complainant, who submitted a complaint to SHO, Police Station

Bapoli, District Panipat on 23.10.2015, alleging therein that on 20.10.2015 at about 7.00 P.M., while his brother Ram Kumar was at his shop, then Ramdiya, landlord, alongwith his son Parveen @ Mahesh came and asked Ram Kumar to vacate the shop. An altercation ensued, during the course of which, a danda blow was given by Ramdiya on the head of Ram Kumar, besides slaps and fist blows by both the assailants. Thereafter, they fled from the spot. The injured was taken to the hospital but he died during treatment, succumbing to the injuries received by him in the incident. After completion of the investigation and other formalities, challan against Ramdiya was prepared and filed in the Court. During the course of trial, an application under Section 319 Cr.P.C. was moved, to summon Parveen @ Mahesh as an additional accused, which was however, declined by the trial Court, vide impugned order giving detailed reasoning that from the compliant submitted by the complainant to the police Exhibit P-1 it is clear that Ramdiya was armed with danda, whereas Parveen @ Mahesh was empty handed and there are vague allegations of beatings against Parveen @ Mahesh. Further Jai Kumar has improved his version, when appeared in the witness box and have stated that Parveen @ Mahesh and Ramdiya both were having dandas and they gave danda blows on the head of his brother Ram Kumar. It has further been observed that during the investigation conducted by the police, Parveen @ Mahesh was not found to be involved in the occurrence. Therefore, on the basis of such vague allegations, Parveen @ Mahesh cannot be summoned to face trial for the commission of offence punishable under Sections 302 and 506 read

with Section 34 IPC alongwith his co-accused. Learned additional Sessions Judge, has referred to the following authorities of the Apex Court :-

“9. The Hon'ble Supreme Court of India in "**Mohd. Shafi Vs. Mohd. Rafiq and anr. 2007(2) RCR (Criminal) page- (Cr.) 762**" has further held that -

" Before, thus, a trial court seeks to take recourse to the said provision, the requisite ingredients therefore must be fulfilled. Commission of an offence by a person not facing trial, must, therefore, appears to the court concerned. It cannot be ipse dixit on the part of the court. Discretion in this behalf must be judicially exercised. It is incumbent that the court must arrive at its satisfaction to this behalf. "

10. The Hon'ble Supreme Court has further observed in "**Municipal Corporation, Delhi V. Ram Krishau Rohtagi & Ors. 1983(1) RCR (Criminal) page- (Cr.) 73**" that :

19 ... But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken"

It was further stated in para 13:

" it is evident that before a court exercises its

discretionary jurisdiction in terms of Section 319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned in all likelihood would be convicted. Such satisfaction can be arrived at inter alia upon completion of the cross-examination of the said witness. For the said purpose, the court concerned may also like to consider other evidence. "

11. Embarking upon the provisions of Section 319 Cr.PC, the Hon'ble Supreme Court of India in **"Krishnappa Vs. State of Karnataka 2004(4) RCR {Criminal} page- (Cr.) 678"** has further observed that:

"....A judicial exercise is called for, keeping in conspectus of the case, including the stage at which the trial has already proceeded with the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence."

It was further observed that:

" The Court, while examining an application under Section 319 Cr.PC, has also to bear in mind that there is no compelling duty on the court to proceed against other persons. In a nutshell, it means that for exercise of discretion under Section 319 Cr. PC, all relevant factors, including the one noticed above, have to be kept in view and an order is not required to be made

mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused. "

In the end, the Additional Sessions Judge has come to the conclusion that it is difficult to hold with any amount of certainty that the evidence adduced by the prosecution relating to accused, would in all probability, secure a conviction against him. Resultantly, the application was dismissed.

Feeling aggrieved the complainant has filed the present revision petition, notice of which was given to the respondents.

I have heard learned counsel for the parties, besides going through the record and I find that since the order passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law and there is nothing to hold that this order suffers from any illegality or infirmity, much less apparent on the face of it, I do not see any reason to interfere with it while exercising the revisional jurisdiction.

Finding no merit in the revision petition, the same is accordingly, dismissed.

(H.S. Madaan)
Judge

18.1.2018

chugh

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No