

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

**Criminal Misc.No.M-5464 of 2018 (O&M)
Date of Decision : 14.03.2018**

Harvinder Singh Sodhi

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

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

RAJ SHEKHAR ATTRI, J. (Oral)

The petitioner has preferred the instant petition under Section 482 Cr.P.C. for setting aside the order dated 12.06.2017, passed by the learned Judicial Magistrate Ist Class, Ferozepur, vide which application under Section 319 Cr.P.C. for summoning respondent No.2 as an additional accused has been dismissed and also the order dated 28.11.2017, passed by the learned Addl. Sessions Judge, Ferozepur, vide which the revision petition filed against the said order dated 12.06.2017, has been dismissed.

Before proceeding further, this Court would like to give a glimpse of the prosecution story: On the application of petitioner-complainant, prosecution was lodged against nine persons for the offences under Sections 380, 420, 465, 467, 468, 471, 120-B IPC. However, the petitioner moved an application under Section 319 Cr.P.C. to summon Piyush Dhoot as additional accused to face trial alongwith the remaining accused. The said application was dismissed by the trial court while observing as under:-

“Thus there are no allegations that accused Piyush Dhoot made any offer to the complainant and induced him to do such contract. It has not been established that accused Piyush

Dhoot was active partner nor even his presence has been stated to be there at the time of the agreement. Thus there is no case made out regarding involvement of Piyush Dhoot in the alleged cheating and forgery. Though Courts have wide powers under Section 319 Cr.P.C. but the same cannot be exercised to summon a wrong person whose name was never disclosed by the complainant when the matter was reported to the police or even during investigation. This Court does not find any justified reason to summon above mentioned person namely Piyush Dhoot as additional accused. Accordingly application in hand is hereby dismissed.”

Then, State of Punjab preferred a revision petition under Section 397 Cr.P.C. against the said order of Magistrate and the revision petition was also dismissed while observing as under:-

“The above citation are not applicable to the facts of the present case as from the material on record, it is not established that respondent Piyush Dhool connived with the other partners of the Company or the accused facing the trial in the commission of the alleged offences as he was not a signatory to the agreement dated 05.01.2011 of sub-contractorship between the parties. It was held in M/s Thermax Limited Vs. K.M.Jhony 2011 (4) RCR (Criminal) 409 (SC) that where in a criminal complaint under Section 420/406 IPC against Company, Directors of the Company were also roped in without assigning any role to them of commission of offence, the complaint was liable to be quashed. The concept of vicarious liability was unknown to criminal law.

In the entire episode, no specific role or mens rea has been attributed to the respondent Piyush Dhoot. The statement of the complainant as PW1 is an improvement against the respondent. As such, the impugned order dated 12.06.2017 is illegal and does not call for any interference in

revision. As such, the revision filed by the revisionist being without any merit is dismissed. The revisionist is directed to appear before the trial court on 06.12.2017. Lower court file alongwith copy of this order be sent back to the trial court well before the date fixed. File of the revision be consigned to record room."

I have heard learned counsel for the petitioner and have gone through the material available on record.

A bare perusal of the FIR as well as material on the record does not establish a specific role to said Piyush Dhoot. Petitioner want to implead him as accused solely on the ground that he is the director of the company but in view of the law laid down by the Hon'ble High Court in case ***M/s Thermax Limited vs. K.M.Jhony 2011 (4) RCR (Criminal) 409 (SC)***, a person cannot be arrayed solely on the ground that he was the director of the company.

To the mind of this Court, the orders do not suffer from any illegality, irregularity or infirmity and, therefore, the same do not call for interference and are hereby affirmed.

In view of my aforesaid discussion, the instant petition being devoid of any merit is dismissed.

However, nothing expressed above will not affect the merits of the case.

14.03.2018
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(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No