

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

CRR-2766 of 2018
Date of Decision:23.08.2018

Satish

....Petitioner

Versus

State of Haryana & anr.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Anshumaan Dalal, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this revision petition, the complainant has assailed order dated 07.06.2018 of learned Sessions Judge, Rohtak, whereby his application under Section 319 Cr.P.C for summoning respondent No.2- Sunil as additional accused was dismissed.

Briefly, in the morning of 02.09.2017, two persons namely Dharambir, son of Mukhtiar Singh and Sunil, son of Jai Singh were found dead in Village Bahu Jamalpur. Consequently, the petitioner, being real brother of Dharambir deceased, lodged FIR No.0408, dated 02.09.2017, under Sections 302/201/202/34 IPC, raising suspicion over Naseeb and his mausi's son Navin (already facing trail) for their murder, alleging that his deceased brother Dharambir had left the house on the previous evening on the motor cycle of Sunil deceased. When his brother did not return home late night, he contacted him on his mobile and asked him to come back home. However, his deceased brother told him to come after 20 minutes disclosing that he was with deceased Sunil, Naseeb son of Raj Singh and his Mausi's son (later on found as accused Navin). After waiting for some time, when Dharambir did not return, complainant Satish went to sleep. In

the next morning he found two dead bodies lying in a pool of blood in front of his house, out of which, one was of his brother Dharambir and another was of Sunil son of Jai Singh. There were several injuries on both the dead bodies.

During investigation, one Raj Singh, son of Chander Singh made statement under Section 175 Cr.P.C before the Investigating Officer showing the complicity of Naseeb and Navin and their friends in the murder of Dharambir and Sunil.

After thorough investigation, police filed final report under Section 173 Cr.P.C against only two accused namely Naseeb and Navin.

During trial, prosecution witness Navin Singh, son of Jai Singh appeared as PW-5 and testified about the complicity of Sunil son of Umed Singh. Immediately thereafter, complainant moved an application under Section 319 Cr.P.C. to summon Sunil, son of Umed Singh, which has been rejected by the trial Court vide impugned order dated 07.06.2018.

Learned counsel for the petitioner *inter alia* contends that name of Sunil son of Umed Singh, though did not come directly in any of the statements of the prosecution witnesses under Section 161 Cr.P.C. before the police or at the time of conducting inquest proceedings under Section 175 Cr.P.C., but his name had come indirectly as accomplice of two accused, already facing trial. Two representations {Annexure P-6 (colly)} were moved by the petitioner-complainant before filing final report under Section 173 Cr.P.C. in Court to re-investigate the matter, specifically naming Sunil son of Umed Singh as one of the accused for murdering Dharambir and Sunil, but the police did not take any action on the same.

Having considered the submissions made by learned counsel for

the petitioner, I find the instant petition completely devoid of any merit for the reasons to follow:-

In representations {Annexure P-6 (colly)}, allegedly moved by the petitioner-complainant, he has introduced himself as eyewitness, though the prosecution case is based on circumstantial evidence. Statement of petitioner before the police under Section 161 Cr.P.C. was based on hearsay on the basis of which, FIR was registered, inasmuch as he had only made conversation from his deceased brother and had asked him to come back, who, in turn, disclosed him that he was in the company of the accused. Therefore, the identity of Sunil son of Umed Singh sought to be summoned as additional accused is completely disputed at the relevant time in the company of the deceased.

That apart, Raj Singh, who made statement before the investigating officer at the time of conducting inquest proceedings, also did not name Sunil son of Umed Singh, sought to be summoned as a culprit to the occurrence as one of the accused with the main accused.

Statement of PW5 Navin during trial has rightly not been relied upon by the trial Court in view of the fact that for the first time he had deposed about presence of Sunil Singh son of Umed Singh in the company of the deceased. Prior to that, he did not ever make any effort to give any supplementary statement naming Sunil Singh son of Umed Singh also as one of the accomplices of the main accused in committing murder of Dharambir and Sunil.

Even no role has been attributed to Sunil sought to be summoned as additional accused.

PW5 Navin is not witness to the occurrence, rather he is only a

witness to the last seen. The entire case is based on circumstantial evidence.

I have gone through the impugned order and find no illegality or perversity in the same.

Dismissed.

However, anything observed hereinabove shall not be construed as an expression of opinion on the merits of the case.

23.08.2018
monika

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No