

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-11496-2016 (O&M)
Date of Order:31.07.2019

Subhash

..Petitioner

Versus

Raghubir Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Hari Om Sharma, Advocate, for the petitioner.
None for respondent no.1.
Mr. T.C.Dhanwal, Advocate, for respondent no.2.

ANIL KSHETARPAL, J(Oral)

Short question which arises for determination is:-

*“Whether a witness who has been examined by the
prosecution can be summoned as an accused under
Section 319 Cr.P.C.?”*

Some facts are required to be noticed.

Sant Lal had died on 16.11.2005. He had left behind 5 sons, 3 daughters and a widow. Pyare Lal, who is alleged to be a practicing advocate had allegedly forged a Will dated 15.08.2005 of his father. A complaint was filed by another son Raghubir Singh of Sant Lal alleging that a fake/forged Will has been set up by Pyare Lal. In the aforesaid criminal complaint, preliminary evidence was recorded in which Subhash Soni was examined as PW1. Subhash Soni is alleged to have worked as a Clerk with Pyare Lal, Advocate at the relevant time. On the aforesaid statements of Subhash Soni, other witnesses and judgment of the Civil Court, declared that the will in question is fake/forged Will.

Learned Judicial Magistrate Ist Class summoned Pyare Lal vide order dated 22.02.2013. Revision filed against the order of summoning was dismissed by the learned Additional Session Judge, Hissar, vide order dated 03.03.2015.

During the pendency of the trial, Pyare Lal, accused no.4 who has been summoned by the court, filed an application under Section 319 Cr.P.C. for summoning Subhash Chander Soni-petitioner as additional accused. The aforesaid application was allowed by the Judicial Magistrate Ist Class vide order dated 21.08.2015 which was also affirmed by the learned Additional Sessions Judge in revision vide order dated 04.03.2016.

It is in these circumstance that the question which has been framed is required to be answered.

Fortunately, there are two judgment of the Court explaining that a witness who has already been examined from the prosecution side cannot be summoned as additional accused in view of proviso to Section 132 of the Indian Evidence Act, 1872. Section 132 of the Indian Evidence Act is extracted as under:-

Section 132. *Witness not excused from answering on ground that answer will criminate.—A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:*

(Proviso) —*Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.*

The aforesaid two judgments are as under:-

- (1) **Hardev Singh vs. State of Punjab, 2016(4) R.C.R. (Criminal) 1.**
- (2) **R. Dineshkumar @ Deena vs. State Rep. by Inspector of Police and others, (2015)3 SCC (Crl.) 1.**

Learned counsel for the respondent representing Pyare Lal could not draw attention of the Court to any judgment taking a contrary view. Division Bench of this court had answered the questions which were posed before it which included the question which has been noticed above. Even Hon'ble Supreme Court has also laid down on the similar lines. Proviso to Section 132 of the Indian Evidence Act is clear and categorical. Section 132 of the Indian Evidence Act provides that a witness shall not be excused from answering on the ground that the answer will criminate him. Proviso to Section 132 of the Indian Evidence Act provides that no such answer given by a witness shall subject him to any arrest or prosecution or be proved against him in any criminal proceedings, except a prosecution for giving false evidence by such answer.

In view of the aforesaid clear and categorical mandate, to which this court is bound, present petition is allowed. Orders under challenge are set aside by declaring that the petitioner could not be summoned as additional accused as he had already appeared as a witness for the

prosecution and the order of summoning was passed after considering his own evidence and now cannot be used to criminate him.

31st July, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No