

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

274

CRM-M-13987-2018 (O&M)
Date of decision: 29.08.2019

Vikrant

..... Petitioner

Versus

Pushpa and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Akshay Jindal, Advocate
for the petitioner.

Mr. Satyavir Singh Yadav, Advocate
for respondents No.1 and 3.

Mr. Vikas Chopra, DAG, Haryana.

ANIL KSHETARPAL, J.(ORAL)

This petition was filed challenging the order dated 17.11.2017 passed by the Judicial Magistrate Ist Class dismissing the application under Section 319, Cr.P.C. for summoning additional accused which has been confirmed in revision petition.

Learned Judicial Magistrate after examining the evidence has recorded as under:-

“Now coming to the present application, a perusal of report under Section 173 Cr.P.C., more particularly, the statement of complainant and other witnesses made under Section 161 Cr.P.C. shows that there are different versions regarding the fact that whether there were only the family members of the accused along with Jony @ Vipul, Krishan son of Norang etc. or there were only the accused and his family members present on the spot because in the supplementary statement recorded by the police of the complainant Vikrant and ESI Rajbir Singh, it has

come on record that a separate affidavit was filed by the complainant stating that the names of Jony @ Vipul and Naveen son of Mewa Singh etc. were wrongly mentioned by him and also statement of Ashok Kumar has come on record regarding the fact that no MLR of Anil and Sulochana and Sagar were got prepared by them nor any X-ray reports were prepared. Hence, it is apparent that there are improvements in the statements of witnesses under Section 161 Cr.P.C. Not only this, the witnesses such as Sulochana and Kamaljeet etc. have given different version, from that of the complainant in their statements made to the police. It is settled law that while proceeding to dispose of an application under Section 319 Cr.P.C., the Court should not proceed merely on the basis of prima facie evidence but rather there should be cogent evidence leading the Court to believe that the additional accused are required to be summoned in order to avoid prejudice to the case of the prosecution. In the present case, the application under Section 319 Cr.P.C. has been moved on the ground that in the FIR , names of the family members of the accused were mentioned and their names also figure in the examination-in-chief of the complainant while appearing before the Court. However, I do not find force in the arguments of learned counsel for the complainant that this material is not sufficient to summon the additional accused under Section 319 Cr.P.C. because a bare perusal of the entire police report shows that only the family members of the accused have been picked and chosen by the complainant and other related witnesses for levelling allegations against them. There is a mention of 25-30 other persons also but identity of not even one of them has been disclosed.

7. *Furthermore, the other accused who were named by the complainant in the FIR, were also later on given a clean chit by filing a separate affidavit regarding mentioning of their names. Hence, it is apparent that names of the family members of the accused were deliberately not struck off and it appears that they are intentionally being wrongly brought into the picture so as to cause harassment to the accused. For these reasons, the*

application in hand does not deserve to be allowed and the same is hereby dismissed.”

This Court has heard learned counsel for the parties at length and with their able assistance gone through the paper book.

Learned counsel for the petitioner has submitted that the additional accused sought to be summoned were specifically named in the FIR and after the police investigation, found them innocent. He has further submitted that the prosecution has recorded the statement of various witnesses who have clearly implicated persons who are sought to be summoned as co-accused. He further submitted that the medical evidence also support that fact. Hence, he prayed that the order under challenge should be set aside.

Learned trial Court has examined the entire aspects of the matter including the improvements made by the first informant in his evidence. Improvements have also been made in the evidence of Sulochana and Kamaljit etc. The Court has noticed that the witnesses have given different versions. Still further, the Courts have given cogent reasons to reject the application under Section 319, Cr.P.C.

This Court while exercising powers under Section 482 of the Code of Criminal Procedure has a limited jurisdiction. Apart from that, learned counsel for the petitioner failed to point out any perversity or patent error in the orders passed.

Hence, there is no ground to interfere.

The petition is dismissed.

29.08.2019
D.Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No