

205

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45837-2016 (O&M)
Date of decision-31.10.2019

Vijay Kumar Mahajan and others

....Petitioners

Vs.

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Gautam Dutt, Advocate for the petitioners.

Mr. Sukhdeep Parmar, DAG, Haryana.

MANOJ BAJAJ, J.

Petitioners (accused) have filed this petition under Section 482 Cr.P.C to challenge the revisional Court order dated 20.10.2016 whereby it has proceeded to uphold the order on charge dated 07.01.2016 passed by the trial Court in case FIR No.197 dated 20.07.2006 registered under Sections 420, 467, 468, 471 and 120-B of Indian Penal Code, 1860 at Police Station Hodal, District Palwal.

Learned counsel for the petitioners contends that the subject FIR was registered on the basis of the complaint given by Sh. Mange Ram, the then District Magistrate, HAFED, Faridabad against Shailesh Kumar Gupta. After completion of investigation, the final report was submitted and upon perusal of the same, the trial Court found that no offence punishable under Prevention of Corruption Act, 1988 was made out and as a result, the

matter was sent back to the Court of Chief Judicial Magistrate, Palwal, who further assigned it to the Court of Sub Divisional Judicial Magistrate, Hodal for further proceedings. The trial in the said FIR commenced against accused Shailesh Kumar Gupta, who was charge-sheeted for the offence punishable under Sections 420, 467, 468, 471 and 120-B IPC. The said trial ended in conviction of Shailesh Kumar Gupta through judgment dated 17.04.2007 and while convicting him, the trial Court also adversely commented against the investigating officer by pointing out the serious lapses and requested the DGP Police to take effective steps to ensure that all guilty officials are booked for alleged offence committed by the accused. Pursuant to the said direction, the Vigilance Committee was constituted and a fresh report under Section 173 (8) Cr.P.C. was filed against the accused persons. After considering the said report, the charges were framed on 07.01.2016 and aggrieved against the same, the revisional Court passed the impugned order dated 20.10.2016.

Mr. Dutt has contended that the mode of prosecution adopted by the respondent-State is erroneous in law as the trial in respect of the accused came to an end on 17.04.2007. It is vehemently argued that the observation of the trial Court regarding lapses in investigation alone cannot be a ground for prosecuting the petitioners, as in the final report submitted against Shailesh Kumar Gupta in the year 2007, no incriminating material against petitioners was found by the trial Court. He contends that no fresh evidence was collected by the Investigating Agency while filing the fresh challan against the petitioners. He contends that there were various stages

before the trial Court during the course of trial either to take the cognizance on the basis of the final report submitted by the Police against the petitioners either at the time of framing of the charges or by invoking provisions of Section 319 Cr.P.C. during the trial. He submits that the disclosure statement of convict recorded by the Police is meaningless and, therefore, the said order framing charge is bad and warrants interference.

On the other hand, learned State counsel has opposed the prayer and submitted that the revisional Court has taken into account the record of the case carefully before framing the charges. The said order of framing of charges by the trial Court was not interfered by the revisional Court as there was no illegality or impropriety in the said order. He submits that present petition under Section 482 Cr.P.C amounts to second revision which is not maintainable.

After hearing learned counsel for the parties, this Court finds that the revisional Court has specifically noticed in its order dated 20.10.2016 that the prosecution after having collected sufficient evidence (placed on file) has filed the present challan against the present revisionists/accused. Learned State counsel was asked to produce the fresh material collected during investigation pursuant to the judgment of conviction dated 17.04.2007, however, learned State counsel on instruction from SI Jai Kishan stated that no fresh evidence was collected during the said investigation after the judgment of conviction. He submits that the report which was already on record was analyzed by the Vigilance Committee and based upon the same, the fresh challan was filed against the

accused. The said challan dated 11.12.2010 is on record as Annexure P-3 which indicates that the petitioners were apprehended on the strength of criminal conspiracy punishable under Section 120-B IPC, the first final report submitted against Shailesh Kumar Gupta is not on record.

A perusal of the impugned order reveals that the revisional Court has not at all referred to the fresh evidence submitted by the final report dated 11.12.2010, which was not previously available before the Court.

In view of the above, impugned order dated 07.01.2016 (Annexure P-4) is set aside and the case is remanded back before the revisional Court to decide it afresh. The parties are directed to appear before the Court on 09.12.2019.

Disposed off.

(MANOJ BAJAJ)
JUDGE

31.10.2019

vanita

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No