

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

202

CRM-M-7464-2015(O & M)

Date of Decision:18.07.2019

Abdul Hamid

....petitioner

Versus

State of Haryana and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ANIL KSHETARPAL

Present: Mr.Rakesh Gupta, Advocate
for the petitioner

Mr.Manish Bansal, DAG Haryana

Mr.Jitender Nara, Advocate
for respondents No.2 to 6

ANIL KSHETARPAL, J. (ORAL):

Prayer in the present petition is for quashing of order dated 03.09.2014 (Annexure P4) passed by Addl.Sessions Judge, Mewat and order dated 21.07.2012 (Annexure P2) passed by the Judicial Magistrate First Class, Nuh, vide which the application under Section 319 of the Code of Criminal Procedure (for short, "Cr.P.C.") had been dismissed.

In a private complaint filed, five police officials, impleaded as accused. After considering pre-summoning evidence, the Court ordered summoning of accused No.1 i.e. Bishan Singh but refused to summon the remaining accused-respondents No.3 to 6 (herein).

Learned counsel appearing for the respondents has submitted that the order dated 21.07.2012 passed by the trial Court refusing to summon remaining four accused was challenged in revision but was upheld, hence, learned Magistrate has wrongly noticed that no revision was filed.

After leading some evidence, complainant-petitioner filed an

application under Section 319 Cr.P.C. for summoning the additional accused i.e. accused Nos.2 to 5 (in the complaint). Learned trial Court dismissed the application only on the ground that at the summoning stage, the Court had refused to summon these petitioners. The operative part of the order dated 21.07.2012 passed by the trial Court reads as under:

“After going through the submissions of both side, I found force in the submissions of learned counsel for accused. It is very much clear that the persons namely Devinder Singh, Krishan Singh, Mahabir Singh, Rajbir Singh have not been ordered to be summoned by the learned predecessor of the Court. Moreover, it is also clear that the complainants have not filed any revision against the order dated 08.12.2007. It is also clear that the summoning order dated 08.12.2007 was passed by the learned predecessor of this Court on the basis of evidence brought on record by the complainant. Therefore, on perusal of evidence led by the complainant before summoning order, this Court is of the opinion that there is no ground to proceed against the persons namely Devinder Singh, Krishan Singh, Mahabir Singh, Rajbir Singh, sought to be summoned as accused in the present case and in view of this, the application in hand is devoid of merit and same is ordered to be dismissed accordingly.”

As per the contention of learned counsel for the respondents, learned trial Court has wrongly noted that no revision was filed to order summoning accused No.2 to 5 before the trial Court.

It may be noticed that revision against the order passed refusing to summon accused No.2 to 5 under Section 319 Cr.P.C. has also been dismissed, vide order dated 03.09.2014.

This Court has heard learned counsel for the parties at length

and with their able assistance has gone through the paper book.

In the considered view of this Court, the reasons assigned by the trial Court are apparently erroneous. At the stage of considering application under Section 319 Cr.P.C., the Court is required to see and examine the evidence available on the file. Merely because, initially the Court refused to summon the accused, cannot be the sole ground to dismiss the application under Section 319 Cr.P.C. to summon the additional accused at a subsequent stage. Reference in this regard can be made to 1981 Cr.L.J. (NOC) 27.

Keeping in view the aforesaid facts, the order dated 21.07.2012 passed by the Judicial Magistrate First Class, Nuh and affirmed in revision vide order dated 03.09.2014 passed by the Addl.Sessions Judge, Mewa, are set aside. Learned trial Court/Judicial Magistrate First Class, Nuh, is requested to re-decide the application on merits in accordance with law.

The petition stands disposed of.

18.07.2019

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No