

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-9922 of 2014

Date of Decision: March 25, 2019

Mahender Singh

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Abhimanyu Singh, Advocate
for the petitioner

Mr. Satish Saini, DAG Haryana

Mr. Rajesh Lamba, Advocate
for respondents No. 3 to 7

Sudhir Mittal, J. (Oral)

The petitioner is the complainant. He was instrumental in getting FIR No. 401 dated 09.12.2010 registered at Police Station Tauru under Sections 147, 148, 149, 323, 506, 324 IPC.

Fifteen persons were named in the FIR. After conducting the investigation, final report under Section 173 Cr.P.C. was presented by the police and nine persons were challaned. Six persons were found innocent and kept in column No. 2.

During the course of the trial, the complainant appeared as PW-2 and reiterated his statement made before the Investigating Agency. Thereafter, an application under Section 319 Cr.P.C. was moved to summon six persons found innocent in the final report as additional accused. This application has been rejected by the trial Court and revision there against has also been dismissed, leading to filing of the present quashing petition.

Learned counsel for the petitioner submits that a perusal of the FIR shows that specific role was attributed to the persons sought to be summoned as additional accused and injuries inflicted by them are supported by the medico legal reports of the injured persons. A total of four persons were injured in the incident. The complainant has implicated the persons sought to be summoned as additional accused in his statement on oath and, thus, the Courts below have erred in rejecting the application under Section 319 Cr.P.C.

Learned State counsel as well counsel for the private respondents submit that the police investigated the case thoroughly and on the basis of statements recorded under Section 161 Cr.P.C. as well as other evidence collected during investigation, the private respondents were found innocent and kept in column No. 2. Apart from the statement of the complainant, there is no material on record of the trial Court to justify the summoning of the private respondents as additional accused and, thus, the impugned order does not suffer from any infirmity. The petition is, thus, liable to be dismissed.

Section 319 Cr.P.C. empowers the Court to summon any person not being the accused for being tried alongwith the accused persons if on the basis of the evidence on record it is satisfied that such persons ought to be tried alongwith the accused. This provision has been examined in detail by the Honb'le Supreme Court in ***Hardeep Singh vs. State of Punjab and others, 2014(1) RCR(Criminal) 623***. It has been held that a person may be summoned as an additional accused under Section 319 Cr.P.C. if from the material on the record of the trial Court, the said Court is satisfied that such a person is also guilty of committing the offence. The material, based on which the satisfaction is to be recorded, is the material available on the file of the trial Court itself and not material which is part of the police investigation. Thus, the statement of witnesses recorded under Section

161 Cr.P.C. or other evidence collected by the Investigating Agency are irrelevant so far as Section 319 Cr.P.C. is concerned. The level of satisfaction of the concerned Court has to be such that it is convinced that in case the evidence on record remain unrebutted, the additional accused may be convicted. Thus interpreted, the trial Court would not be justified in summoning persons sought to be summoned as additional accused, if the complainant only reiterates his stand before the police, while appearing as a prosecution witness and apart from that there is no other evidence available on record. The statement of the complainant has already been thoroughly investigated by the police and the persons sought to be summoned as additional accused have been found innocent and, therefore, before such persons can be summoned as an additional accused, the satisfaction as aforementioned must be recorded by the trial Court.

Examining the instant case on the touchstone aforementioned, the trial Court examined on the touch stone aforementioned, the trial Court was justified in rejecting the application under Section 319 Cr.P.C. as apart from the statement of the complainant, there is no other evidence available on the record to implicate the private respondents. The revisional Court was consequently justified in dismissing the revision petition.

For the aforementioned reasons, there is no merit in this petition and the same is dismissed.

March 25, 2019

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No