

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc.-M No.6923 of 2017(O&M)
Date of Decision: January 16, 2019.

Gulshan Kumar

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMENDRA JAIN.

Present: Mr.Dheeraj Mahajan, Advocate, for the petitioner.
Mr.Davinder Bir Singh, DAG, Punjab.
Mr.Deepak Arora, Advocate, for respondent Nos.2, 4 & 5.
Mr.N.K.Vadhera, Advocate, for respondent No.6.

-. -

RAMENDRA JAIN, J. (Oral)

Through this petition under Section 482 Cr.P.C., the petitioner-complainant has laid challenge to the order dated 20.02.2017 (Annexure P-8) of the trial court, whereby his application under Section 319 Cr.P.C. was dismissed.

According to the complainant, in the early hours of 20.6.2016, he alongwith his father was going to Gurudwara on a motorcycle. Some assailants, six in number, in Bolero car chased them. As a result thereof, father of the complainant-petitioner lost control over his motorcycle and resultantly struck the same against a tree. In the meantime, the assailants, out of whom three were named in the FIR and three in the supplementary statement on 22.06.2016, gave beatings to the father of the petitioner with base-ball sticks. However, the petitioner though once was caught by the assailants, but he succeeded in escaping from the spot.

Resultantly, the petitioner reached home and thereafter received a phone call of his father on his mobile, asking his well being. Thereafter, the

petitioner with his cousin reached at the spot and found his father lying in injured condition. He shifted his father to hospital, where the doctors declared him brought dead.

On this allegation, FIR No.37 dated 20.06.2015 under Sections 302, 148 & 149 IPC was registered at Police Station Behrampur, District Gurdaspur.

The police, after completion of investigation, filed final report under Section 173(2) Cr.P.C. against three persons, namely, Simranjit Singh @ Tikka, Mandeep Singh @ Gora and Deepak Singh under Section 304 IPC, instead of 302 IPC. Remaining three assailants were declared innocent and placed in column No.2 of the final report. Accordingly, the above named three accused were charged-sheeted under Section 304 IPC.

The petitioner, after his examination-in-chief as PW-2, moved application under Section 319 Cr.P.C. for summoning respondent Nos.2 to 6 as additional accused, i.e., five more persons as additional accused. The trial court, after giving notice and hearing both the sides, dismissed the same vide the impugned order dated 20.02.2017 (Annexure P-8).

Learned counsel for the petitioner contends that trial court has erred in dismissing application of the petitioner under Section 319 Cr.P.C., without appreciating the fact that the persons who were declared innocent by the police, were specifically named, while recording FIR and in supplementary statement by the petitioner. Petitioner-complainant was never associated in the investigation. Therefore, the persons named in the FIR were wrongly and illegally declared innocent by the police. The petitioner earlier also filed CRM-M No.43673 of 2015, seeking direction to the police to conduct proper and fair investigation, but despite that the

police did not associate the petitioner in the investigation. The supplementary statement has been withheld by the police, while filing final report in Court.

Learned State counsel assisted by learned counsel representing respondent Nos.2,4,5 and 6 urged that call details of all the assailants named by the petitioner in his initial statement which culminated into FIR and supplementary statement, were collected and scrutinized. The persons, who were declared innocent were not found to be present at the spot. Therefore, they were rightly declared innocent. Even some persons declared innocent by the police were not named in the FIR and supplementary statement. Accused Maninder is facing trial. The petitioner is confused about the number of assailants. That apart, during investigation, it was found that deceased had died on account of his own rash and negligent driving and hitting a tree on being chased by the accused, who are facing trial. Respondent No.6-Dinesh was never impleaded nor any relief was sought against him by the petitioner, even at the time of filing earlier petition bearing CRM-M No.43763 of 2015.

Having given thoughtful consideration to the rival submissions, this Court finds that the petition is completely devoid of merits for the reasons to follow.

The petitioner till date has not raised any grouse against filing of the final report by the police under Section 304 IPC after deleting Section 302 IPC, though as per his allegations, his father was murdered by respondent Nos.2 to 6. Therefore, in a way, he admits correctness of the investigation done by the police.

The petitioner himself is confused about the number of assailants inasmuch as in initial version and supplementary statement, he disclosed six persons in total as assailants out of whom three are facing trial. Therefore, according to the petitioner, remaining three alleged assailants were wrongly and illegally declared innocent by the police. Contrary to it, through the instant petition, the petitioner has laid claim that respondent Nos.2 to 6, i.e., five in number, were wrongly and illegally declared innocent. Therefore, according to this petition, the assailants were 8 in number which is altogether contrary to the repeated stand of the petitioner that they were 6 in number.

Non-filing of the supplementary statement of the petitioner with final report under Section 173(2) Cr.P.C., may be a human error, but this fact in itself does not prove malafide and illegality of the police in conducting investigation inasmuch as call details of all the accused named by the petitioner, were collected and scrutinized by the police. Thereafter only, the police finding complicity of three persons, filed challan against them, while declaring the others innocent.

There is a categorical finding of the investigating agency in the final report under Section 173(2) Cr.P.C., that father of the petitioner had died on account of his own negligence by losing control over his motorcycle and hitting the same in a tree, being chased by licensed liquor vendors, on suspicion that he was indulged in trade of illicit liquor. No challenge has been laid till date to the above-said categorical observation of the investigating agency, by the petitioner, despite giving him liberty to challenge the same at appropriate stage, inasmuch as the petitioner even did not contest the framing of charges against the accused persons under

Section 304 IPC, instead of 302 IPC. He even did not raise grouse against the same by filing a revision petition or appeal, whatsoever.

In view of the discussion and observations made herein-above, the instant petition is accordingly dismissed.

January 16, 2019

mohinder

(RAMENDRA JAIN)

JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No