

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 61464 of 2018

Date of Decision: 7.11.2019

Parteek Kumar

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. S.S.Jattan, Advocate
for the petitioner.

Mr. Rahul Mohan, DAG, Haryana.

Mr. Satbir Rathore, Advocate
for respondent No. 2.

HARNARESH SINGH GILL, J. (ORAL)

This petition has been filed by the petitioner challenging the order dated 4.10.2018 (Annexure P-3) passed by learned Additional Sessions Judge, Panchkula, whereby respondent No. 2 was discharged qua commission of offence under Section 120-B IPC and the case was sent back to the learned Magistrate, Panchkula for further trial of the petitioner for the offence under Section 216 IPC.

Case of Parteek Kumar-petitioner is that he is the brother of Bhupesh Rana (since deceased) and is the complainant in case FIR No. 89 dated 16.4.2018 under Sections 302, 216, 120-B, 148, 149 IPC and Section 25 of the Arms Act, registered at Police Station Chandimandir, District Panchkula.

Learned counsel for the petitioner has argued that in the present case, Kulbir Singh-respondent No. 2 was arrested on 6.5.2018 and challan

against him was presented vide final report dated 1.8.2018 (Annexure P-2). At a later stage, other co-accused Bhupinder Singh @ Bhupi Rana and Gaurav @ Roda were also arrested, who suffered disclosure statement regarding involvement of respondent No. 2 in the present case.

Learned counsel for respondent No. 2 has argued that *prima facie* no offence under Section 120-B IPC was made out against respondent No. 2. He had not been named in the FIR in question and out of eight witnesses, cited under Section 161 Cr.P.C., only one witness has stated that respondent No. 2 had conspired in committing the murder of Bhupesh Rana but even this witness had said nothing regarding the role of respondent No. 2 and as far as the petitioner/complainant is concerned, he did not name respondent No. 2 in his first two statements and had only mentioned the name of respondent No. 2 in the third statement as was informed by his friend.

I have heard the learned counsel for the petitioner as well as learned State counsel and counsel for respondent No. 2.

The petitioner has impugned the order dated 4.10.2018 (Annexure P-3) vide which charge under Section 120-B IPC was not framed against respondent No. 2.

Making reference of Section 216 Cr.P.C. will be important at this stage which is reproduced hereunder for ready reference:-

“216. Court may alter charge.

- (1) Any Court may alter or add to any charge at any time before judgment is pronounced.*
- (2) Every such alteration or addition shall be read and explained to the accused.*
- (3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the*

opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

To my mind, the Court while framing the charges has to satisfy itself that there is sufficient ground to presume that the accused has committed an offence. In the present case, the Court below has discussed that none out of the seven witnesses, cited under Section 161 Cr.P.C., had named respondent No. 2. Even the petitioner/complainant named him in his third statement that he came to know from his friend that respondent No. 2 was involved in the crime.

Learned counsel for the petitioner has relied on the judgment passed by Co-ordinate Bench of this Court in case of ***Surinder Kaur @ Shindo @ Chhindo and others versus State of Punjab 2015 (25) R.C.R. (Criminal) 942*** wherein it was held that while framing charge-sheet, the Court has to satisfy itself that there is sufficient ground to presume that the accused has committed the offence.

Learned counsel for respondent No. 2 has relied on the

judgment of Apex Court in case of *Union of India through C.B.I., New Delhi versus Mohd. Abdul Hafeez Etc. 2018 AII SCR (Crl.) 1314*, wherein the order of the High Court was confirmed but liberty was granted to the trial Court to alter charges under Section 216 Cr.P.C. after recording of evidence or taking note of the material produced.

The petitioner-complainant himself in the third statement spells out the name of respondent No. 2 and out of eight witnesses, cited under Section 161 Cr.P.C., only one could name him but that too without mentioning his role.

I do not find any reason to interfere with the order dated 4.10.2018 passed by Additional Sessions Judge, Panchkula.

The petition is dismissed.

(HARNARESH SINGH GILL)
JUDGE

November 07, 2019
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes