

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-35492-2021 (O&M)
Date of Decision:- 11.10.2021

Hanuman and another

... Petitioners

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Amit Kumar Jain, Advocate for the petitioners.

Mr. Rajiv Sidhu, DAG, Haryana,
assisted by ASI Shiv Kumar.

Mr. D.S.Nirban, Advocate for the complainant.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. The petitioners Hanuman and Sandeep has approached this Court assailing order dated 20.8.2021 (Annexure P-4) passed by Additional Sessions Judge, Narnaul vide which the trial Court has declined an application moved by the petitioners for examining Shri Bhagwan, Anil Kumar Chauhan, MHC/concerned officer of CPS Rajor Garden West District Delhi, Yogender Singh and Sunil Kumar in defence evidence in trial arising out of FIR No. 180 dated 5.6.2018 under Sections 279/337/304/420/212/120-B IPC registered at Police Station Kanina, District Mahendergarh. .
2. The FIR was lodged at the instance of Dharambir wherein it has been stated that on 4.6.2018 his nephew Rinku alongwith Pankaj was going on a motorcycle which was being driven by Rinku. The complainant and Suresh

Kumar were also on a motorcycle, a little behind them. It is alleged that a pick-up van came from opposite side which was being driven at a high speed and in a negligent and rash manner and hit against the motorcycle driven by complainant's nephew, as a result of which complainant's nephew Rinku and Pankaj sustained injuries. While Pankaj died at the spot, Rinku breathed his last in the hospital. It is alleged that the pick-up van, which was without number plate sped away from the spot. Although, initially the FIR was registered for offences under Sections 279 and 304-A IPC but later offence under Section 304 IPC was added in place of offence under Section 304-A IPC on the basis of an application dated 29.6.2018 moved by Dharambir/complainant to the Investigating Officer stating therein that the offending vehicle was bearing registration No. HR-61-9200 and that infact the driver after causing the accident had reversed his vehicle and had run his vehicle over the injured to ensure that they are killed.

3. The name of owner of the offending vehicle was found to be Hanuman. The offending vehicle i.e. HR-61-9200 was found to be driven by Sandeep son of Hanuman at the time of accident. It is the case of prosecution that the driver Sandeep is brother-in-law of one Sunil and the petitioner, who is an Advocate, is elder brother of Sunil. It is the case of prosecution that the petitioner, who is an Advocate, had conspired with the main accused and in order to help him had planned to destroy the vehicle in question and in execution of the plan, the vehicle in question is stated to have been sold to Sunil by way of an affidavit dated 8.3.2018 and said Sunil vide agreement dated 20.5.2018, had given the vehicle to one Shri Bhagwan who is a client of Satyavir, Advocate on monthly rent of ₹10,000/- and later Shri Bhagwan got a false FIR lodged i.e. FIR No.042164 dated 27.11.2018 at Police

Station, Rajori Garden, West Delhi to the effect that his vehicle had been stolen though the same had never been stolen. Later, Shri Bhagwan sold the pick-up van as scrap to a scrap-vendor to save Sandeep from legal consequences and the vehicle had, thus, been destroyed.

4. The learned counsel for the petitioners submits that in the instant case, the vehicle in question had already been sold by petitioner No. 1 - Hanuman much before the date of accident and an affidavit to this effect had also been executed by him and as such, he had no domain over the vehicle. It has been submitted that after the sale of the said vehicle in question, the said vehicle was stolen from the possession of the purchaser and regarding which FIR i.e. FIR No.042164 dated 27.11.2018, was lodged at Police Station, Rajori Garden, West Delhi. The learned counsel submits that the said evidence as regards the sale of the vehicle in question and regarding its theft are material facts to establish the defence of the accused and that the trial Court by declining the application for summoning the witnesses concerned with the said facts has committed a grave error which would seriously prejudice the accused in defending himself.
5. Opposing the petition, the learned State counsel assisted by counsel for the complainant has submitted that it is a case where the vehicle in question stood duly registered in the name of petitioner No. 1 - Hanuman and that the mere execution of an affidavit cannot be interpreted to mean that the ownership stood transferred. The learned State counsel has further submitted that infact the entire story of transfer of the pick-up van and its theft has been masterminded by co-accused Satyabir Singh, who is an Advocate and who is related to petitioner No. 2, being elder brother of Sandeep's brother-in-law. The learned State counsel has, thus, submitted

that in these circumstances there is certainly no case for allowing the application for summoning the said witnesses and the application has been correctly dismissed by the trial Court.

6. I have considered rival submissions addressed before this Court.
7. Since the accused has come out with some affidavit regarding sale of the vehicle in question and which is stated to have been stolen subsequently regarding which FIR was lodged and which, if proved, could be legitimate defence of accused that he was not in possession of offending vehicle, this Court is of the opinion that the petitioners/accused cannot be deprived of an opportunity to lead evidence to substantiate their defence, as the instant case is not just a case of death in vehicular accident but a graver offence of Section 304 IPC has also been added which attracts stricter punishment. As such, the petition merits acceptance and is hereby accepted and the impugned order is hereby set aside. Consequently, the application dated 20.8.2021 (Annexure P/4) is accepted and the petitioners are permitted to examine the PWs mentioned at Sr. No. 1 to 5 in their defence. The trial Court shall issue summons and, if need be, depute special messengers for securing their presence at the earliest. The petitioners are directed to render utmost cooperation and shall not seek any date once the presence of the said witnesses is secured so that the trial is concluded at the earliest.
8. The petition stands accepted accordingly.

11.10.2021
kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No