

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

- (1) CRR-3203-2011 (O&M)
... Petitioner
Gulab
Versus
State of Haryana and others ... Respondents
- (2) CRM-M-2231-2012 (O&M)
... Petitioner
Gulab
Versus
State of Haryana and others ... Respondents

Date of Decision:- 23.9.2022

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Anurag Jain, Advocate with
Ms. Kannupriya, Advocate for the petitioner(s).

Mr. Arun Beniwal, DAG, Haryana.

Mr. Parmod Parmar, Advocate for respondents No. 2 and 3.

GURVINDER SINGH GILL, J.

1. This order shall dispose off the above mentioned two petitions filed on behalf of Gulab (complainant) as both the said petitions arise out of the same FIR i.e. FIR No. 3 dated 4.1.2008 under Sections 323, 325, 341, 147, 149, 506 IPC, Police Station Siwani, District Bhiwani and the issue involved therein is as regards summoning of additional accused with the aid of Section 319 Cr.P.C.

2. A few facts necessary to notice for disposal of these petitions are that FIR No. 3 dated 4.1.2008, Police Station Siwani, District Bhiwani was lodged at instance of the petitioner-complainant against ten accused namely Rajender, Ram Parkash, Sushil, Rohtash, Sanjay, Sombir, Jai Bhagwan, Rajpal, Ramphal and Chhotu Ram. The matter was investigated by the police and upon conclusion of investigation, challan was presented on 22.9.2008 against six accused out of the aforesaid ten accused, while the following four persons were kept in column no. 2 :-

- (i) Jai Bhagwan
- (ii) Rajpal
- (iii) Ramphal
- (iv) Chhotu Ram

3. After framing of charges, the examination-in-chief of petitioner-complainant Gulab was recorded on 1.6.2009 (Annexure P-3 in CRR 3203-2011). Immediately upon recording of examination-in-chief of the complainant-Gulab, an application was moved by prosecution under Section 319 Cr.P.C. seeking summoning of four accused who had been kept in Column no. 2, which was accepted by learned SDJM, Siwani vide order dated 6.6.2011 and Jai Bhagwan, Rajpal, Ramphal and Chhotu Ram were ordered to be summoned so as to face trial alongwith remaining accused.

4. Thereafter, two of the accused summoned with the aid of Section 319 Cr.P.C. namely Rajpal and Ramphal preferred a revision petition in the Court of Sessions challenging order dated 6.6.2011, which was accepted by the learned Additional Sessions Judge, Bhiwani and the impugned order dated 6.6.2011 was set aside vide order dated 7.10.2011. The aforesaid order

dated 7.10.2011 is under challenge in the revision petition i.e. CRR-3203-2011 filed by the complainant-Gulab.

5. The remaining two accused namely Jai Bhagwan and Chottu Ram, who had not filed any revision petition so as to challenge their summoning under Section 319 Cr.P.C. moved an application before learned SDJM, Siwani seeking their discharge mainly on the ground that order dated 6.6.2011 which had been challenged by the remaining two persons Rajpal and Ramphal had been set aside. The learned SDJM, Siwani accepted the said application and vide order dated 4.1.2012 (Annexure P-7 in CRM-M-2231-2012). The said order dated 4.1.2012 has been challenged by the complainant-Gulab by way of filing CRM-M-2331-2012 wherein a challenge has also been made to order dated 7.10.2011 of learned Additional Sessions Judge, Bhiwani, which otherwise is also assailed in criminal revision as well.
6. The learned counsel for the petitioner has assailed order dated 7.10.2011 passed by learned Additional Sessions Judge, Bhiwani vide which order of learned SDJM, Siwani summoning accused Rajpal and Ramphal under Section 319 Cr.P.C. had been set aside, and also order dated 4.1.2012 passed by learned SDJM, Siwani discharging the remaining two accused Jai Bhagwan and Chottu Ram while submitting that the learned Additional Sessions Judge, Bhiwani while accepting the revision petition had not evaluated the evidence in the correct perspective and that the revision petition was accepted even without issuing notice to the complainant. The learned counsel has further submitted that when the remaining two accused moved an application before the SDJM, Siwani for their discharge, one of

the factors which weighed with the Presiding Officer for discharge of accused Jai Bhagwan and Chottu Ram was that the case has been pending since long and was one of the oldest cases identified in Action Plan 2011 which cannot be a valid reason for discharge.

7. The learned counsel has submitted that in the present case pursuant to passing of the impugned orders, there has been further development inasmuch as the injured Sardara Ram has been examined by the trial Court who has stated in tune with the case of the complainant and even the doctor has been examined whose testimony also lends corroboration to the case of the complainant and that in these circumstances, four persons namely Jai Bhagwan, Rajpal, Ramphal and Chhotu Ram, who have been kept in column no. 2, in any case, deserve to be summoned and tried by the Court.
8. On the other hand, the learned counsel representing respondent no. 4 has submitted that the impugned order dated 6.6.2011 passed by learned SDJM, Siwani does not suffer from any infirmity and was passed after taking note of the legal position as regards Section 319 Cr.P.C. It has been submitted that since the impugned order dated 6.6.2011 was passed by learned SDJM, Siwani in the presence of Public Prosecutor, the mere fact that the complainant was not represented would be of no consequence. It has further been submitted that since the trial in respect of the remaining six accused, who had been tried by the trial Court, already stands concluded, there is no occasion for trying the petitioners at this stage as additional accused.
9. This Court has considered rival submissions addressed before this Court.

10. This Court is of the opinion that the impugned orders i.e. order dated 4.1.2012 passed by learned SDJM, Siwani and order dated 7.10.2011 passed by learned Additional Sessions Judge cannot sustain for the following reasons :-

- (i) that order passed by learned Additional Sessions Judge, Bhiwani in revision i.e. order dated 7.10.2011 whereby the order dated 6.6.2011 passed by learned SDJM under Section 319 Cr.P.C. has been set aside, had been passed without issuing notice to the complainant, as is evident from perusal of the impugned order dated 7.10.2011 and as such is against the provisions of Section 397 read with Section 401(2) Cr.P.C. which mandates that before passing any order adverse to accused or any other person in a revision petition, such affected accused or any person is required to be heard. The aforesaid issue is squarely covered by a judgment of Hon'ble Apex Court in (2012) 10 SCC 517 – Manharibhai Muljibhai Kakadia and another versus Shaileshbhai Mohanbhai Patel and others.
- (ii) that the learned SDJM, Siwani while discharging the accused Jai Bhagwan and Chottu Ram vide order dated 4.1.2012 had mainly placed reliance upon order dated 7.10.2011 passed by learned Additional Sessions Judge, Bhiwani which as per discussion being made is found to be unsustainable. The other reason assigned by learned SDJM, Siwani was that the case was very old and was identified in Action Plan 2011 which cannot be made a basis for discharging the accused in a hurried manner.

- (iii) that it will not be out of place to mention that while the application under Section 319 Cr.P.C had been made immediately when examination-in-chief of the complainant had concluded but as of now, two more witnesses have been examined i.e. injured Sardara Singh and Dr. Kriti Raj, who according to counsel for the petitioner supported the case of the petitioner.
- (iv) that the trial Court having framed charges against the accused Jai Bhagwan and Chhotu Ram would not have any power to discharge the accused, as the same would virtually amount to review of its own order framing charges against the accused.
11. In view of the aforesaid reasoning, the impugned orders dated 4.1.2012 passed by learned SDJM and dated 7.10.2011 passed by the learned Additional Sessions Judge are found to be unsustainable and deserve to be set aside.
12. Consequently, the revision petition – CRR-3203-2011 is hereby accepted and the impugned order dated 7.10.2011 passed by the learned Additional Sessions Judge, Bhiwani is set aside. Similarly, the criminal miscellaneous-CRM-M-2231-2012 is also accepted and the impugned order dated 4.1.2012 is set aside.
13. The trial Court is directed to consider the matter pertaining to Section 319 Cr.P.C. afresh while taking into account all such evidence, which may have come on record as of now. It shall be open to the petitioner to move a fresh application under Section 319 Cr.P.C. as there has been a substantial change after disposal of the earlier application. In case, any such application is

moved within 3 weeks from today, the trial Court shall endeavour to dispose off the same expeditiously having regard to the fact that the matter pertains to FIR lodged in the year 2008. Needless to mention, it shall be open to the parties to work out some amicable settlement having regard to the fact that occurrence pertains to the year 2008, and co-accused were released on probation.

14. The petitions stand accepted in the aforesaid terms.

15. A photocopy of this order be placed on the file of connected case.

23.9.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No