

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

201

Date of decision: 01.08.2022

1. CRR-3102-2019

ROHIT

.....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.....Respondents

2. CRR-470-2020 (O &M)

MOHIT ALIAS TAGGA

.....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present : Mr. Dinesh Arora, Advocate
for the petitioner in case CRR-3102-2019.
Mr. Kamal Deep Sehra, Advocate
for the petitioners in case CRR-470-2020.

Mr. Tanuj Sharma, AAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. Since both the petitions arise from a common FIR bearing No. 223 of 02.06.2017 registered at Police Station Civil Lines, District Sonipat, embodying therein offences constituted under Sections, 148, 149, 302, 323, 324 of the IPC, thereupon, both are amenable for a common order being rendered thereon. Moreso, when they arise from a common thereto summoning order, as made by the learned trial Judge concerned, and, after allowing, the public prosecutor's application cast

under Section 319 Cr.P.C.

2. At the outset, though, co-petitioner Rohit is attributed an incriminatory role, in the relevant lethal assault, as made upon the person of the deceased, but co-petitioner Mohit is not assigned any incriminatory role in the petition FIR, nor, he becomes named therein as an accused.

3. However, even with respect to the incriminatory role, as voiced in the FIR with specificity, with respect to co-accused Mohit, yet in the report filed under Section 173 Cr.P.C., by the investigating officer concerned, before the learned Court concerned, he has therein, on the basis of the disclosure statements made by the arrested accused, and, as became made during their respective custodial interrogation(s), rather revealed that co-petitioner Mohit, did not participate with them, in the relevant lethal assault, as made upon the victim/deceased. Moreover, there is also a further articulation therein, that co-accused Mohit @ Tagga, has been discharged through an order made, on the apposite application, hence by the jurisdictionally empowered Court.

4. Since, at this stage, no material has emerged displaying that the above order of discharge, as made upon Mohit's application, rather becoming challenged, hence, before a jurisdictionally competent Court, and, also it becoming set aside. In consequence, it acquires binding, and, conclusive effect. The further sequel thereof, is that prima facie, in respect of the discharge, as made qua accused Mohit, through an order made by the jurisdictionally competent Court, hence the public prosecutor concerned, was, irrespective of the inculcation being strived to be drawn against him, through echoings made in the examination-in-

chief of PW-1, rather estopped to maintain it, before the learned jurisdictionally empowered Court concerned, nor any valid order was amenable for being made thereons.

5. Be that as it may, not only with respect to co-accused Mohit, but also with respect to one Rohit, who however, has not been named in the FIR, the learned trial Judge concerned, through an order drawn on the public prosecutor's application cast, under Section 319 Cr.P.C., has after allowing the above application, directed that, they be summoned as co-accused, for theirs facing charges, and, thereafter theirs facing trial with the already arrayed accused, in the report filed, before the Committal Court concerned, by the investigating officer concerned.

6. The gravamen of the application, as cast under Section 319 Cr.P.C., by the public prosecutor, before the learned trial Judge, becomes anchored upon a statement, made in the examination in chief of PW-1, who has therein, attributed an incriminatory role to both Rohit, and, Mohit, inasmuch as, theirs being members of the unlawful assaulting assembly, and, theirs also participating in the relevant assault, as became made upon the deceased, inasmuch as, both wielding *sua* (ice-breaker), and, with user thereof, theirs causing injuries on the person of the deceased.

7. Though the above incriminatory echoings, as occur in the examination-in-chief of PW-1, fall within the ambit of **Hardeep Singh Vs. State of Punjab, (2014) 3 SCC 92**, and, were sufficient to constrain the learned trial Judge concerned, to proceed to allow the public prosecutor's application cast under Section 319 Cr.P.C., and, that

too without the awaiting the makings of any cross examinations by the learned defence counsel upon PW-1.

8. However, the above conclusion, as becomes drawn by this Court, and, appertaining to the discharge of accused Mohit, rather being made, through for reasons (supra), a valid binding order, becoming rendered by the jurisdictionally empowered Court, upon the apposite application, conspicuously did work, as an estoppel against the public prosecutor concerned, to rely upon the afore incriminatory echoings made against co-accused Mohit, for his drawing an application under Section 319 Cr.P.C., and, nor also the learned trial Judge concerned, could proceed to prima facie allow it, and, nor, could he subsequently order, that he be summoned to face trial, alongwith the appearing accused in the petition FIR. However, the above appears to have become occasioned, as revealed from an order drawn on 18.09.2019, rather, on anvil of a CCTV footage, hence exhibited in Court, wherein emerged the purported appearances at the crime site of co-accused Mohit, and, Rohit. Therefore, it appears that PW-1, in making in his examination-in-chief, an attribution of guilt to the present petitioners, had depended upon the CCTV footage, which too became depended, upon the learned trial Judge concerned, to conclude that the petitioners, were active members of the assaulting unlawful assembly.

9. Consequently, it appears that the public prosecutor concerned, was not completely sure, also about the credibility of PW-1, in his assigning an incriminatory role (supra), to the present bail petitioners, and as such, he ensured qua rather with the leave of the court, hence PW-1, being recalled for further examination, only for his

through a CCTV footage, corroborating the incriminatory echoings, as became made in his examination-in-chief against the accused petitioners herein.

10. If so, the tenderings, and, exhibition in court by PW-1, of the CCTV footage, becomes the moot point, for determining whether its tendering, and, also its exhibition in court, was a lawful exercise, or, not.

11. It is but settled, that any electronic evidence(s) becomes amenable for being tendered into evidence, or, for exhibition(s) thereof, hence, for the relevant purposes, by the prosecution, or, by the prosecution witness concerned, only upon, the relevant authenticating statutory certification becoming thereons made, whereupon alone, it would become capacitated, to become admissible, readable, and, also amenable for exhibition. However, a reading of the order made by the learned trial Judge, on 18.09.2019, does not disclose, that the contentious CCTV footage, depended upon by him, to make a conclusion, that the summoning order is required to be made, upon the present petitioners, did hold the relevant authenticating certification, and, if so, it was prima facie neither admissible in evidence, nor was admissible for being exhibited, and nor, it was amenable for sightings therein, rather the purported presence at the crime site, of the petitioners, as members of the assaulting assembly, nor, at this stage, it carries any evidentiary vigour. The further reasons, for making the above conclusion, becomes rested upon the respondent, in its reply, on affidavit, filed to the petition making a contention in paragraph iv thereof, paragraph whereof becomes extracted hereinafter.

“iv. That no CCTV camera was installed in the premises General Hospital, Sonipat, which could cover the place of occurrence nor the CCTV camera of any shop located there, covers the main gate of the hospital, where the incident had taken place. The place of occurrence was a busy place, where several persons had gathered at the time of incident. No CCTV footage of the place of occurrence was available during investigation.”

12. A reading whereof, makes palpably clear that neither any CCTV camera was installed in the premises of General Hospital, Sonipat nor any CCTV Camera became installed at any shop located in proximity to the crime site. The effect thereof, is that, the above conclusion does acquire an immense fortification therefrom.

13. Be that as it may, since the learned State Counsel submits, that the investigating officer concerned, has also appended with challan, a CD, thereupon, as, and, when the investigating officer steps into the witness box, it is open to him, to only if the CD, has a valid authenticating certification, to tender the CD into the evidence, and, if on its passing the test of admissibility, the court permits its exhibition, in court, and, the presence at the crime site, of the present petitioner(s), is revealed, thereupon, at that stage, it is permissible for the learned public prosecutor, to move a fresh application cast under Section 319 Cr.P.C.

14. Consequently, at this stage, the impugned order is quashed, and, set aside.

01.08.2022
kavneet singh

(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No