

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

207

CRM-M-10573 of 2020
Date of Decision:17.08.2023

Balbir Singh and another

....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Lakhwnder Singh Mann, Advocate,
for the petitioners.

Mr. Sarabjit Singh Cheema, DAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the order dated 29.08.2019 (Annexure P-7) and order dated 15.02.2020 (Annexure P-8) whereby the trial Court upon closure of the evidence of prosecution has ordered for issuance of summons to both the petitioners for recording their statements under Section 313 of the Code of Criminal Procedure and summoned through non-bailable warrants respectively whereas in fact the trial Court had never summoned said petitioners to face trial as they were in column No.2 and that charges were never framed against the said petitioner.

2. It has been submitted by learned counsel for the petitioners that it is a case where the present two petitioners were earlier declared as innocent by

the police during investigation and were kept in column No.2. Thereafter, *challan* was presented but the petitioners remained in column No.2 only even in the supplementary *challan*. He submitted that thereafter no application was filed by the prosecution under Sections 190 and 319 of the Code of Criminal Procedure for summoning of the petitioners as additional accused nor any charges were framed against the petitioners but at the time of the recording the statement under Section 313 of the Code of Criminal Procedure the petitioners were summoned for recording of their statements under Section 313 of the Code of Criminal Procedure vide order dated 29.08.2019 (Annexure P-7) and thereafter even non-bailable warrants have been issued against them vide order dated 15.02.2020 (Annexure P-8). He submitted that the statements of the petitioners under Section 313 of the Code of Criminal Procedure cannot be recorded as the charges were not framed qua the petitioners.

3. Mr. Sarabjit Singh Cheema, learned DAG, Punjab has also stated that both the petitioners were declared as innocent and were kept in column No.2 and qua them the supplementary *challan* was presented only while keeping their names in column No.2.

4. On 13.03.2020 this Court while issued notice of motion had specifically directed the trial Court to file a report before this Court with regard to the status of the present petitioners especially to the effect that as to whether the said petitioners were *challaned* by the police and as to whether any charges were framed against them and they have been facing trial or not and further in case the petitioners were in column No.2, then as to whether any application under Section 319 of the Code of Criminal Procedure was filed against them and as to whether they were ever summoned or not.

5. A report has been received from the learned Judicial Magistrate Ist Class, Nakodar dated 05.08.2020. As per the report, the petitioners were kept in column No.2 and a supplementary *challan* was presented under Section 173(8) of the Code of Criminal Procedure against both the petitioners while putting their names in column No.2. Thereafter, vide order dated 19.01.2016 both the petitioners were discharged by the learned Magistrate. However, on 22.08.2016 charges were re-framed against the remaining co-accused and the charges were also framed against these accused persons/petitioners while mentioning them as proclaimed offenders in the charge sheet. The learned Judicial Magistrate Ist Class has concluded that from the perusal of the file that the accused persons who are the petitioners were not *challaned* by the police. However, supplementary *challan* under Section 173(8) of the Code of Criminal Procedure was presented vide order dated 16.05.2015 while incorporating their names in column No.2. Both the petitioners were discharged vide order dated 19.01.2016. However, on 22.08.2016 the charges were framed against the remaining accused and the charges were also framed against these accused/petitioners while mentioning their names as proclaimed offenders in the charge sheet. However, no application under Section 319 of the Code of Criminal Procedure was filed for summoning the accused persons and they were never summoned to face the trial. The relevant portion of the conclusion given by the Judicial Magistrate is reproduced as under:-

“Summarily, on requisitioned points, from perusal of file undersigned comes to the conclusion that (i) The accused persons/petitioners were not challaned by the police. However, supplementary challan under Section 173(8) Cr.P.C. was presented vide dated 16.05.2015 while mentioning their names in

column no.2. (ii) Both accused persons/petitioners were discharged vide order dated 19.01.2016. However, on 22.08.2016, charges were re-framed against the remaining accused and charges were also framed against these accused persons/petitioners while mentioning them as Proclaimed Offenders in the charge sheet. (iii) No application under Section 319 Cr.P.C. was filed for summoning the accused persons and they were never summoned to face trial.”

6. In view of the report of the learned Judicial Magistrate Ist Class, it is clear that the petitioners were earlier kept in column No.2 and there was no application under Section 319 of the Code of Criminal Procedure for summoning them as additional accused and they never faced trial. Therefore, this Court is of the view that the petitioners now could not have been summoned for getting their statements recorded under Section 313 of the Code of Criminal Procedure since they were never arraigned as accused at any stage. Therefore, the aforesaid orders dated 29.08.2019 (Annexure P-7) and dated 15.02.2020 (Annexure P-8) qua the petitioners deserve to be set aside. Consequently, the present petition is allowed. The impugned orders dated 29.08.2019 (Annexure P-7) and dated 15.02.2020 (Annexure P-8) qua the petitioners are set aside.

(JASGURPREET SINGH PURI)
JUDGE

August 17, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No