

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

111

CRM-M No.14348 of 2023 (O&M)
DATE OF DECISION: 12th JULY, 2023

Avtar Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Suneet Pal Singh Aulakh, Advocate,
for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C for quashing of FIR No.14 dated 08.02.2012 registered under Sections 323, 324, 149, 506 IPC at Police Station Sahnewal, District Ludhiana and for quashing of order dated 20.02.2014 (Annexure P-6) passed by the Judicial Magistrate Ist Class, Ludhiana, vide which, the petitioner has been summoned under Section 319 Cr.P.C. to appear before the trial Court in the above mentioned FIR.

2. It is submitted by learned counsel for the petitioner that during the investigation, the petitioner was found innocent by the police. Although, the challan was filed against five persons regarding the incident in which the petitioner is sought to be involved. Now, however,

after the full-fledged trial, the said five co-accused have already been acquitted by the trial Court. The case against the petitioner is no different than the allegations against the co-accused. Although, the petitioner had been summoned by the trial Court under Section 319 Cr.P.C., however, the petitioner was not even aware of the factum of he having been summoned by the trial Court because he is residing Abroad and is currently a citizen of United State of America. Therefore, on account of absence, the petitioner was declared as proclaimed person by the trial Court. However, the petitioner challenged the said order before this Court and the said order has been set aside by this Court, vide order dated 23.02.2023 passed in CRM-M-9250 of 2023.

3. Learned counsel for the petitioner has further submitted that since the trial Court has not applied its mind to all the facts available on record and has relied only on the statement made by the complainant, which was not even subjected to cross-examination, and in fact, was repetition of the statement made by the complainant under Section 161 Cr.P.C., therefore, *prima facie* the order summoning the petitioner under Section 319 Cr.P.C. is not tenable. Learned counsel for the petitioner has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of ***Brijendra Singh and others Versus State of Rajasthan, 2017 (3) R.C.R. (Criminal) 374*** and has submitted that except the statement made by the complainant in examination-in-chief, there was no other material against the petitioner. Rather, the entire material which has come on record during the trial of the co-accused have shown the falsity of the case of the prosecution, resulting into acquittal of five co-accused. Therefore, the order passed by the trial Court summoning the petitioner

under Section 319 Cr.P.C. deserves to be set aside and the petitioner deserves to be spared of the un-necessary trial. Learned counsel has also relied upon the judgment rendered by Division Bench of this Court in the case of ***Sudo Mandal @ Diwark Mandal Versus State of Punjab, 2011(2) R.C.R. (Criminal) 453***, to submit that once the co-accused have already been acquitted, then no purpose would be served by making the petitioner to face the trial.

4. Notice of motion.

5. On the asking of the Court, Mr. Sandeep, Additional Advocate General, Punjab assisted by ASI Dinesh Kumar, P.S. Sahnewal, Distt. Ludhiana, accepts notice on behalf of the respondent/State and has submitted that the petitioner has rightly been summoned by the trial Court under Section 319 Cr.P.C. Earlier, the petitioner had deliberately avoided appearing before the trial Court and he was waiting only for the co-accused to be acquitted; if at all they would be. Therefore, the petitioner cannot be permitted to take advantage of the factum of the other co-accused having been acquitted by the trial Court. Hence, the petitioner deserves to be put to trial. Ultimately, it is for the trial Court to see whether the petitioner deserves to be acquitted or not.

6. Having heard learned counsel for the parties and having perused the case file, this Court is of the opinion that the petitioner deserves protection against the un-necessary trial. Although, there is nothing wrong in ordering summoning of an accused on the basis of statement made by a witness before the trial Court, even if such a statement is not subjected to cross-examination, however, the other

circumstances also have to be taken into consideration to arrive at a conclusion as to whether the petitioner/accused should be put to trial or not. In the present case, this Court finds substance in the arguments raised by learned counsel for the petitioner that except the bald statement of the complainant, which was only repetition of the statement made by the complainant under Section 161 Cr.P.C., there is no other material.

7. Moreover, the trial Court had undertaken the complete exercise of trial of the co-accused in which the prosecution had got ample opportunities to produce the entire material on record. However, the material brought on record by the prosecution has been found not sufficient to convict the co-accused. This circumstance also goes in favour of the petitioner, particularly, in view of the fact that the petitioner is an accused in offences jointly alleged under Sections 323, 324, 506 read with Section 149 of IPC. Hence, this Court finds the case of the petitioner to be covered by the judgment of Hon'ble the Supreme Court rendered in the case of **Brijendra Singh and others** (supra), as well as, by the judgment of the Division Bench of this Court rendered in the case of **Sudo Mandal @ Diwark Mandal** (supra).

8. In view of the above, the present petition is allowed. The order dated 20.02.2014 passed by the trial Court summoning the petitioner under Section 319 Cr.P.C., as well as, the proceedings of the trial against the petitioner are hereby ordered to be quashed.

12th JULY, 2023
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

No

Whether Reportable:

Yes

No