



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

CRR-283-2024
Date of Decision: 24.09.2024

AJIT AND ANRPETITIONERS

VERSUS

STATE OF HARYANA AND OTHERSRESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Manoj Chahal, Advocate
for the petitioners.

Mr. Chetan Sharma, DAG, Haryana.

Mr. Deepak Aggarwal, Advocate and
Mr. Sanjeev K. Sharma, Advocate
for Respondent No.2.

SANDEEP MOUDGIL, J

1. This criminal revision petition has been directed to set aside the impugned order dated 23.01.2024 passed by the learned Additional Sessions Judge, Charkhi Dadri, whereby application filed by the prosecution/complainant under Section 319 Cr.P.C. to summon the petitioners kept in column No.2 of the final report under Section 173 Cr.P.C. has been allowed to face trial as additional accused in the case arising out of FIR No.312 dated 27.10.2022 under Section 307, 325, 323, 506, 148, 149, 120-B of the Indian Penal Code and Section 302 IPC added later on, registered at Police Station Badhra, District Charkhi Dadri.

2. It is contended by the learned counsel for the petitioners that the petitioners were found innocent by the Investigating Agency as they were initially not named by the respondent and their names were subsequently added. However, the police did not find role of the petitioners in the entire incident and which is they were kept in column No.2.

3. It is further contended that there is no specific allegation against the petitioners wherein they are the parents of accused Vikash and Vishal. There is no evidence much less fresh evidence collected by the investigating agency against the petitioners as such the summoning of the petitioners by the trial Court by allowing application under Section 319 Cr.P.C. is absolutely illegal and erroneous on the face of it. Therefore, the present petition is liable to be allowed and the impugned order dated 23.01.2024 is liable to be set aside.

4. The learned Deputy Advocate General, Haryana, appearing for the State and the learned counsel appearing for the complainant have submitted that the petitioners have been named specifically by the complainant since they also participated in the murder of Gajanand alongwith other accused who are already facing trial and both were also present at the place of occurrence and also contributed in the crime leading to the murder of Gajanand and that the accused persons, in order to spread terror in the area, also videographed the occurrence and recording of the video-clip was handed over to the police but the police concealed it. However, accused Ajit also actively participated in the crime as he also pressurized and threatened the respondents family to compromise the matter and, in this regard, an FIR stands registered against him. Police for the reason best known to them, intentionally did not charge-sheeted both the petitioners therefore, the learned

trial Court has rightly allowed the application under Section 319 Cr.P.C. and accordingly, the present petition is liable to be dismissed.

5. Heard both the sides and also perused case file.

6. The police, in the present case, did not charge-sheet the present petitioners in the final report filed by them under Section 319 Cr.P.C. and kept them in column No.2. The case i.e. FIR No.312 dated 27.10.2022 was registered on the written complaint of Rajbala wife of Rajesh, resident of village Berla, wherein she alleged (as per facts summed up in the impugned order) that she is a household lady. Regarding a plot, they have some dispute with one Vishal son of Ajit, resident of village Berla and when she came to know that the family members of Vishal are installing Tin-shed over the plot in dispute, she alongwith Shakuntla wife of Dharambir & Simer wife of Virender went to them and objected for installing the tin-shed. Suddenly, Vishal gave a 'danda' blow on the left ear of Shakuntla. She fell down. When complainant and Simar tried to rescue Shakuntla, then other family members of Vishal, namely Vikas, Sahil, Pankaj and 8-10 other relatives came there and gave injuries to complainant and Simar. On hearing the noise, Gajanand, brother in law (Jeth) of complainant, Anil & Rajesh, sons of Om Parkash, came to rescue them but Vishal gave an axe blow on the head of Gajanand. Kaliya also given 'danda' blows to them. On arrival of some other persons, all the assailants fled from the spot after threatening to kill them in future. The injured were shifted to General Hospital, for treatment. Request for taking legal action against the assailants was made. The respondent-complainant has specifically deposed before the learned trial Court and named the petitioners as the participants of the occurrence and wherein Gajanand had lost his life.

The complainant at the time of registration of FIR has though named the

person who gave the specific injury which led to the death of the victim – Gajanand , even though the petitioners were not specifically named in the FIR yet it cannot be assumed that they were not amongst participants in 8/10 relatives of Vishal.

7. FIR is not the encyclopedia of the entire occurrence and even otherwise the FIR has gist of the occurrence and the entire occurrence comes out from the mouth of the complainant and described during recording of testimony before the trial Court. The trial Court has allowed the application under Section 319 Cr.P.C. on finding a *prima facie* case against the petitioners and if police did not find any participation of the petitioners in the occurrence which is petitioners claim in that eventuality the petitioner will get acquittal. However, at this stage, it is a disputed fact as regards participation/non-participation of the petitioner in the occurrence and this can be looked into by the trial Court alone after examining the evidence of the parties.

8. In “*State of Kerala v. Puttamana Illath Jathavedan Namboodiri (1999 (2) SCC 452)*” it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate Court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

9. Resultantly, the present petition fails and the order dated 23.01.2024 passed by the learned Additional Sessions Judge, Charkhi Dadri, allowing the application of the prosecution/complainant under Section 319

Cr.P.C. to summon the petitioners to face trial as additional accused in the case arising out of FIR No.312 dated 27.10.2022 under Section 307, 325, 323, 506, 148, 149, 120-B of the Indian Penal Code and Section 302 IPC added later on, registered at Police Station Badhra, District Charkhi Dadri, is hereby maintained.

10. The present petition stands dismissed being devoid of any merit.

24.09.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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