

NIHAL SINGH

Versus

STATE OF HARYANA AND ANR.

.....Petitioner

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Atul Lakhanpal, Sr. Advocate with
Mr. R.S. Chahal, Advocate for the petitioner.
Mr. Gurmeet Singh, AAG, Haryana.
Mr. Akashdeep Singh, Advocate for respondent No.2.

HARKESH MANUJA, J. (ORAL)

By way of present petition, challenge has been laid to the order dated 13.08.2015 passed by the learned trial Court whereby the petitioner was summoned as an additional accused in terms of powers under Section 319 CrPC.

2. Having been arrayed as an accused in FIR No.26 dated 30.01.2012 registered under Sections 302/449/34 of IPC and Sections 25/54/59 of Arms Act at P.S. Adampur, District Hissar, upon investigation, the petitioner was declared innocent and kept in column No.2 at the time of filing of challan.

3. Upon framing of charge, the complainant/respondent No.2 appeared as PW-2 and reiterated the involvement of petitioner in the incident relating to the FIR in question followed by filing of an application under Section 319 CrPC by the prosecution for summoning him as an additional accused. Though, the aforesaid application as vehemently opposed, however, vide order dated 13.08.2015, the prayer made therein was allowed by the then learned Addl. Sessions Judge, Hissar thereby,

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summoning the petitioner in exercise of powers under Section 319 CrPC, as one of the accused.

4. By way of the present petition, the aforesaid order dated 13.08.2015 has been assailed by the petitioner.

5. Learned Senior counsel points out to a decision dated 12.04.2023 passed by this Court in CRA-D-1004-DB-2016 to contend that the statement made by the complainant/respondent No.2 has been disbelieved as regards the alleged incident relating to the FIR in question while dealing with appeal filed by co-accused namely Suresh, who has been acquitted by giving him the benefit of doubt and as such the impugned order based on the same deposition cannot be sustained.

6. On the other hand, learned State counsel assisted by Mr. Akashdeep Singh, Advocate appearing on behalf of respondent No.2 vehemently opposes the prayer made in the present petition while submitting that the summoning of petitioner as additional accused in terms of the impugned order was based on a detailed discussion and thus the same warrants no interference.

7. I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made by learned Senior counsel representing for the petitioner.

8. A perusal of the judgment dated 12.04.2023 passed by this Court in CRA-D-1004-DB-2016 which relates to the co-accused namely Suresh shows that the presence of the eye-witnesses and complainant Surinder itself has not been believed while acquitting the two i.e. Suresh and Ramesh in their separate appeals, by giving them the benefit of doubt

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and as such, the same thus cannot be relied upon and made basis for the purposes of summoning of the petitioner as an additional accused which may amount to misuse of process of law in the given facts. Reference in this regard can be made to a decision rendered by Hon’ble Apex Court in case of ‘**Vikas Rathi Vs. State of UP and Anr. 23(2) RCR-55**. Relevant Paras No.13 and 14 are reproduced hereunder:-

“13. The aforesaid material was not sufficient if examined in the light of the law laid down by this Court for summoning of an additional accused in exercise of power under section 319 of the Cr.P.C., 1973 to establish complicity of the appellant in the crime.

14. After conclusion of the entire evidence and examination of the material produced on record even against the charged accused, the trial court had acquitted them vide judgment dated 15.03.2017. It shows that material produced on record was not even sufficient for conviction of the accused against whom chargesheet was filed.”

9. Accordingly, the present revision petition stands allowed and the impugned order dated 13.08.2015 is hereby set aside.
10. Pending application(s), if any, shall also stand disposed of.

26.02.2024
Tejwinder

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No