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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRREF-1-2023
Date of decision: 24.05.2024

Court of its own motion

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Akshay Jindal, Advocate as *Amicus Curiae*.

Mr. Kiran Pal Singh, AAG, Haryana.

MAHABIR SINGH SINDHU, J.

Present criminal reference under Section 395 (2) of the Code of Criminal Procedure, 1973 (for short ‘Cr.P.C.’) has been sent to this Court to seek opinion on the legal question “whether challan submitted under Section 299 Cr.P.C. against a proclaimed offender before Court of Magistrate, could be committed to the Court of Session without ensuring compliance of provisions of Sections 173, 193, 207 and 209 of Cr.P.C. by the concerned Magistrate, simply on the ground that the case of co-accused, who had joined investigation, was committed to the Court of Session”. Aforesaid reference dated 20.09.2023 has arisen in *Sessions Case No. 120 of 2022* titled as “*State Vs. Bikram*” with a request to return the file to learned Magistrate for first completing legal formalities.

(2) In order to reflect upon the controversy, this Court appropriately sought the assistance of Mr. Akshay Jindal, Advocate, as *Amicus Curiae*.



(3) As per prosecution case, an FIR No. 103 dated 28.06.2017, under Sections 201, 302, 452 read with Section 34 of Indian Penal Code, 1860 (for short 'IPC') was registered at P.S. Saha, District Ambala, on the basis of statement made on 28.06.2017 by *de facto* informant-Harvinder Singh, which reads as under:-

"The facts of the case are that on 27.06.2017, SI Bani Singh along with HC Gurdev Singh was present at Saha, Shahzadpur road, near Grain Market on crime patrolling duty. In the meantime, MHC informed him that dead bodies of a woman and a man were lying in the house situated at Saha-Ambala Road, near Saha Chowk and ASI Balraj Singh, HC Kamaljit Singh, HC Taljinder Singh had already proceeded to the spot and asked him to reach at the spot. On this information, he along with HC Gurdev Singh reached at the house of Diwan Singh where ASI Balraj Singh, HC Kamaljit Singh, HC Taljinder Singh met them. Information was given to Harvinder Singh @ Dimpal, who was residing in Dehradun, who came and got recorded his statement that he studies up to 10th class. They were five brother and sisters. He and his elder brother Tarsem Singh @ Raju were taxi drivers. His father Diwan Singh retired in the year 1989 from Sikh Regiment. After retirement, his father had purchased a plot at Saha-Ambala Road, near Saha Chowk and had constructed a small house therein for residential purpose. They have about three acres of land and one old house in Village Pilkhani. His parents mostly used to reside in the plot at Saha for its maintenance. Many property dealers used to visit his father for its purchase but his father did not want to sell the said plot. About one week ago, his mother had come to Dehradun for taking her medicines, who told to him that some days back, they had gone to their house at Village Pilkhani where they revealed that some bricks had uprooted and roof of the house was also broken. In front of their house, house of Ama and Gulla S/o Sardar Labh Singh was situated, who had encroached upon the common street by fixing a gate and on this issue, they gave beating to his parents, due to which they had grudge against them. About 3-4 years ago, his mother had mortgaged her entire land to Chaina which was got redeemed through panchayat and court about two years back.



Since then, Chaina Singhand his nephew Rubbal were having grudge against his parents. Thereafter, his parents returned to their plot at Saha. One boy of their neighbour at Saha, whose name he did not know, was having evil eye on their plot, who had also misbehaved with his parents. On 25.06.2017 at about 6.00 P.M., his father had made a telephonic call to him and stated that he along with his mother wanted to go to Amritsar Gurudwara Sahib but thereafter, he tried to contact his parents for the last two days, but the mobile phone of his father was switched off. As such, on 27.06.2017 in the morning, he sent his cousin Parvinder Singh to see his parents, who went there and found that gate of plot was locked and there was smell inside the house. He scaled the boundary wall and saw that room of his parents was locked and his parents were lying dead. On this information, he and his brother Tarsem @ Raju along with their families came at Saha where they saw the dead body of their parents. One hammer was also lying near their dead bodies. He prayed for taking legal legal action against Ama, Gulia, Chaina Singh, Rubbal Singh and one unknown boy, who had killed his parents while hatching a criminal conspiracy.”

(4) Above FIR was registered against four known persons namely, (1) Amba (2) Gulla (3) Chaina Singh (4) Rubal and one unknown person. During investigation, the Investigating Agency found all the four persons as innocent and did not file final report against them and found that two other persons, namely, Tarsem Singh and Bikram had committed the murder of Diwan Singh and his wife Surinder Kaur. Ultimately, final report under Section 173 (2) Cr.P.C. was filed by the Investigating Agency against two accused persons, namely, Tarsem and Bikram.

(5) It is made clear that co-accused-Tarsem Singh was arrested and name of co-accused-Bikram had surfaced in the disclosure made by co-accused-Tarsem Singh on 02.07.2024, but despite that, co-accused-Bikram could not be apprehended and he was declared as proclaimed offender by the then learned JMIC,

Ambala vide order dated 16.10.2017. On the same very day, i.e. on 16.10.2017, the



case *qua* co-accused-Tarsem Singh was committed by learned JMIC, Ambala to learned Court of Session, Ambala. Ultimately, after conclusion of trial, co-accused-Tarsem Singh was acquitted by the then learned ASJ, Ambala, while extending the benefit of doubt vide judgment dated 22.10.2019.

(6) Although despite declaring the co-accused-Bikram as proclaimed offender, Investigating Agency was not able to apprehend him, but final report under Section 173 (2) Cr.P.C. *qua* him was presented before the then learned JMIC, Ambala on 14.01.2019 and case was posted for examination of witnesses under Section 299 Cr.P.C. On 25.03.2019, learned JMIC, Ambala examined two witnesses i.e. PW1 Surinder Singh and PW2 Harvinder Singh under Section 299 Cr.P.C. Also noteworthy that on 02.05.2022, when the case was fixed for examination of witnesses under Section 299 Cr.P.C., the then JMIC, Ambala passed an order that since the co-accused-Tarsem Singh has been acquitted by the Court of learned ASJ, Ambala vide judgment dated 22.10.2019, therefore, case *qua* accused-Bikram for examination of witnesses under Section 299 Cr.P.C. be put up before learned Sessions Judge, Ambala. For reference, the aforesaid order reads as under:-

“State Vs. Bikram & Anr.

*CHI No.92 of 2019
CNR No.HRAM03-000443-2019*

*Present: Shri Randeep Sandhu, APP for the State.
Accused Bikram already declared P.O. v.o.d. 16.10.2017.
Accused Tarsem Singh @ Raju already acquitted vide
judgment dated 22.10.2019 passed by Shri Rajneesh
Bansal, the then learned ASJ, Ambala.*

Present case is pending before this Court. A perusal of the file shows that case FIR No.103 dated 28.06.2017, Under Sections 302, 425, 34, 201 of IPC, P.S. Saha (Ambala) titled as State Vs. Tarsem Singh & Anr. was committed to the court of Hon'ble Sessions Judge, Ambala vide order dated 16.10.2017 passed by Ms.Neha Yadav, the



then learned JMIC, Ambala and accused Tarsem Singh was directed to be produced before the court of Hon'ble Sessions Judge, Ambala on 24.10.2017 whereas accused Bikram was declared as proclaimed offender vide order dated 16.10.2017.

Supplementary challan against accused Bikram was filed on 14.01.2019 before the court of Ms. Kiranpreet Kaur Saggu, the then learned JMIC. Ambala.

Thereafter, learned Assistant Public Prosecutor has submitted before the Court that main case bearing case FIR No.103 dated 28.06.2017, Under Sections 302, 425, 34, 201 of IPC, P.S. Saha (Ambala) titled as State Vs. Tarsem Singh @ Raju, SC No.197 of 2017 was pending in the court of Shri Rajneesh Bansal, the then learned Additional Sessions Judge, Ambala and accused Tarsem Singh @ Raju was acquitted vide judgment dated 22.10.2019, to which the present supplementary challan pertains. Heard. In view of these submissions made by learned APP, the present supplementary challan is ordered to be put up before the court of Hon'ble Sessions Judge, Ambala on 12.05.2022 for passing appropriate order in this regard. Learned Assistant Public Prosecutor present in the court is directed to inform learned District Attorney regarding the commitment of this supplementary challan. Reader of this court is directed to prepare calendra immediately. Ahlmad of this court is directed to send this supplementary challan before the court of Hon'ble Sessions Judge, Ambala well before the date fixed, complete in all respects.

*Announced in Open Court.
Dated: 02.05.2022.
NST*

*(Sd/-)
Judicial Magistrate Ist Class,
Ambala/UID. No. HR0310"*

(7) Thereafter, learned Sessions Judge, Ambala entrusted the matter to learned ASJ, Ambala and two witnesses i.e. PW1 SI-Balraj Singh and PW2 Surinder Singh were examined by learned ASJ, Ambala. Upon transfer of above learned ASJ, file was put up before another learned ASJ, Ambala (successor Court)



and during the course of hearing, learned ASJ, Ambala vide order dated 02.09.2023 opined that there was no occasion to examine the witnesses in *absentia* by Court of Session; hence, learned ASJ, Ambala requested learned Sessions Judge, Ambala to send the matter before JMIC for examination of witnesses under Section 299 Cr.P.C., as accused Bikram was declared as proclaimed offender on 16.10.2017.

(8) Thus, when trial was going on against co-accused-Tarsem Singh, it was for learned trial Court to record its satisfaction in terms of Section 299 Cr.P.C. with respect to jurisdictional fact(s) and once the trial Court was satisfied, the said Court had an option to record examination of witnesses *qua* co-accused-Bikram as well, who had already been declared as proclaimed offender on 16.10.2017. Even, learned Public Prosecutor did not suggest learned trial Court, in this regard.

(9) Also noteworthy that after presentation of challan *qua* accused-Tarsem Singh, present co-accused-Bikram was never apprehended by the police. It is not conceivable why the concerned Magistrate did not examine the witnesses under Section 299 Cr.P.C. *qua* co-accused-Bikram and still further, concerned Magistrate also erred while committing the case to the Court of Session and learned Sessions Judge also toed the line while assigning the case to learned ASJ, Ambala, when co-accused-Bikram was still absconding.

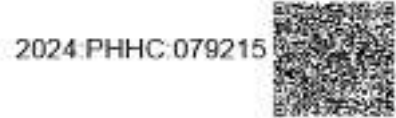
(10) In such a scenario after recording satisfaction of jurisdictional facts in terms of Section 299 Cr.P.C., evidence in *absentia* could have been recorded simultaneously by learned trial Court (ASJ), against co-accused-Bikram (proclaimed offender), while recording evidence against accused-Tarsem Singh. When such a course had not been adopted by learned trial Court at the relevant time, then only option available with learned Magistrate was to record the evidence in *absentia qua* accused-Bikram under Section 299 Cr.P.C., who is still at large. Procedural legal provisions under Sections 173, 193, 207 & 209 Cr.P.C.



are mandatory and any deviation therefrom cannot be permitted in law. Supplying of copies of Police Report and other documents to the accused free of cost is a mandatory provision contained in Section 207 Cr.P.C., which admittedly could not have been done in the present case since accused-Bikram was not before the Court. Apart that, commitment of a case under Section 209 Cr.P.C., *inter alia*, involves appearance of the accused before learned Magistrate.

(11) Once, learned Magistrate has started recording evidence under Section 299 Cr.P.C. for which he was legally competent, then committal of the case by learned Magistrate to learned Court of Session midway, without securing presence of the accused and not complying with the mandatory provisions of Sections 207 & 209 Cr.P.C., was neither justifiable; nor legally sustainable in the eyes of law. Thus, in such a situation, learned Sessions Judge, Ambala had no jurisdiction to assign the matter to learned ASJ, Ambala; rather she should have returned the case file to learned Magistrate for examination of the remaining witnesses in *absentia* under Section 299 Cr.P.C. Hence, order dated 02.05.2022 (*ibid*), passed by learned JMIC as well as repeated directions of learned Sessions Judge assigning the case to learned ASJ, are erroneous.

(12) In view of the above, the present criminal reference is disposed off with the observations that course adopted by learned ASJ, Ambala while suggesting learned Sessions Judge, Ambala to send the matter before concerned Magistrate for examination of witnesses in *absentia* under Section 299 Cr.P.C. was a correct approach.



(13) This Court appreciates the assistance rendered by Mr. Akshay Jindal, Advocate, learned *Amicus Curiae*.

24.05.2024
Harish Kumar

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>