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(2007) 11 P&H CK 0165

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Rve. No. 765 of 2007

Pooja	APPELLANT
Vs	
State of Punjab	RESPONDENT

Date of Decision: Nov. 19, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 173(2), 209, 319, 319(1)
- Penal Code, 1860 (IPC) - Section 109, 120B, 302, 306, 365

Hon'ble Judges: M.M.S. Bedi, J

Bench: Single Bench

Advocate: Naresh Dilawari, for the Appellant; N.K. Sanghi, Addl. A.G. Punjab, for the Respondent

Final Decision: Allowed

Judgement

M.M.S. Bedi, J.
Through the instant petition, the Petitioner has questioned the legality and propriety of the order passed by Additional Sessions Judge, Ropar, opting to summon the Petitioner as an additional accused to face trial alongwith the other accused against whom the case had been committed to the trial Court u/s 209 Code of Criminal Procedure The name of Petitioner was neither mentioned in column No. 2 of the report u/s 173(2) Code of Criminal Procedure nor any evidence was produced in the Court before the application u/s 319 Code of Criminal Procedure was filed by the prosecution. It is an admitted fact that neither any documentary evidence nor any oral evidence has been produced on the record after framing of charges. The trial Court has summoned the Petitioner on the ground that the allegations levelled against her and the other accused are similar as such she is to be treated at par with other accused facing trial u/s 306/120-B IPC.

2. The State counsel and the counsel for the complainant have contended that no doubt the name of the Petitioner is not mentioned in column No. 2 but the trial Court has got jurisdiction on the basis of even the documents which were part of the report u/s 173 (2)

Code of Criminal Procedure to summon an additional accused. Reliance has been placed on a judgment of the High Court in Jagjiwan Singh Gill and Anr. v. State of Punjab, 1983(2) RCR (Crl.) 158, wherein the accused named in column No. 2 of the report u/s 173 Code of Criminal Procedure was summoned holding that recording of evidence prior to summoning the accused is not necessary and that accused can show that there were no grounds to proceed against him. Counsel for the complainant has also relied upon a judgment of Rakesh Kumar and Anr. v. State of Haryana, 2001(3)RCR (Criminal) 681 to contend that the word evidence in Section 319(1) Code of Criminal Procedure should be used in comprehensive and broad sense which would include the material collected by the investigating officer and the material or evidence which comes before the Court and from which the Court can prima facie conclude that person not arraigned before it is involved in the commission of crime.

3. I have considered the contention of counsel for the Petitioner as well as counsel for the Respondent. In order to substantiate the arguments, counsel for the complainant and State have relied upon a suicide note alleged to have been signed by deceased Bhalinder Singh which has been approved by the Forensic Science Laboratory, Punjab, Chandigarh, to be bearing the signatures of deceased Bhalinder Singh. The report of Forensic expert regarding the signatures of Bhalinder Singh on the alleged suicidal note, at this stage, cannot be taken as material against accused Pooja even if the contents are taken on the face value, (the above said opinion may not be taken to be an expression of opinion on merits). I am of the opinion that there is no direct evidence against Pooja. So far as the legal position is concerned, it is now well settled by Hon"ble Supreme Court in Mohd. Shafi v. Mohd. Rafiq and another [2007 (2) LH (SC) 1530: 1 2007 (3) AIC LR (S.C.) 573]that Court can summon a person as an additional accused only when it is satisfied that the person so summoned in all likelihood would be convicted and the Court cannot summon a person even on the basis of an examination-in-chief. Any satisfaction against the additional accused to be summoned can be arrived at, inter-alia, upon completion of cross- examination of the said witness. This Court in Kavis Kumar Vs. State of Punjab, All India Criminal LR (Pb. & Hry.) 360]has held that an order summoning a person as an additional accused without recording the evidence in trial is not proper. The relevant portion of the judgment following the judgment of the Supreme Court in Ranjit Singh Vs. State of Punjab, , is as follows:

6. I am of the considered opinion that the order passed by the learned Additional Sessions Judge, Ferozepur, is contrary to the provisions of Section 319 of the Code of Criminal Procedure. In the case of Ranjit Singh Vs. State of Punjab, the Hon"ble Supreme Court has held that from the stage of committal, the Court could deal with only the accused referred to in Section 209 of the Code of Criminal Procedure. It has been further held that there is no intermediary stage till then for the Sessions Court to add any other person to the array of the accused. The only other stage when the Court is empowered to add any other person to the array of the accused is after recording the evidence. After recording evidence, Section 319 of the Code of Criminal Procedure

empowers the Court to summon any other person as an accused. This Court in Sukhbir Singh v. State of Haryana, Criminal Misc. No. 18124-M of 1998, decided on 9.11.2001: (2002 (1) CLR 459), has quashed the summoning order for the same reasons. In that case, the Petitioner was summoned for the offence under Sections 302/109/365/394 of the Indian Penal Code read with Section 120-B of the Indian Penal Code. The ratio of the aforesaid judgment is fully applicable to the facts and circumstances of this case.

In view of the ratio of the judgment of Hon''ble Supreme Court in Mohd. Shaft''s case (supra), judgment of Ranjit Singh''s case (supra) followed in Kavis Kumar''s case (supra), the impugned order passed by the trial Court summoning the Petitioner as an accused without recording of the evidence is held to be improper.

4. Petition is allowed. The impugned order dated January 29, 2007 (annexure P-1) is set aside. This order will not debar the prosecution agency to move an application u/s 319 Cr.P.C., in case it deems appropriate at an opportune time.