(2012) 10 P&H CK 0157

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R.R. No. 1882 of 2011

Rakesh Kumar		APPELLANT
	Vs	
State of Haryana and Others		RESPONDENT

Date of Decision: Oct. 4, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 319, 401
- Penal Code, 1860 (IPC) - Section 148, 149, 307, 323, 325

Citation: (2013) 3 RCR(Criminal) 913

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Advocate: N.S. Shekhawat, for the Appellant; Gaurav Verma, AAG, Haryana for the Respondent No. 1 and Mr. Akshay Bhan, Advocate for the Respondent Nos. 2 and 3, for the Respondent

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.

The contour of the facts & material, which needs a necessary mention, for the limited purpose of deciding the core controversy, involved in the instant revision petition and emanating from the record, is that, initially, in the wake of complaint of petitioner-complainant Rakesh Kumar (for brevity "the complainant"), a criminal case was registered against accused Jagdish son of Ganpat, Sumit, Ram Chander sons of, Nirmala wife of, Jagdish and Brahm Parkash son of Nityanand, vide FIR No. 240 dated 13.11.2010 (Annexure P1) on accusation of having committed the offences punishable under sections 148, 307, 323, 452 and 506 read with section 149 IPC by the police of Police Station Narnaul. During the course of investigation of the case, accused Nirmala Devi and Brahm Parkash were found innocent. However, after completion of the investigation, the police submitted the challan/final police report, in terms of section 173 Cr.P.C. against the remaining three accused. They were accordingly charge sheeted for the commission of indicated offences and the

case was slated for evidence of the prosecution.

2. The prosecution, in order to substantiate the charges against the accused, examined PW 1 complainant Rakesh Kumar, who made his statement (Annexure P6). As soon as his examination-in-chief was recorded, in the meantime, the prosecution moved an application u/s. 319 Cr.P.C. to summon Nirmala Devi and Brahm Parkash respondents as additional accused to face the trial along with their other co-accused.

3. The trial Judge dismissed the application u/s. 319 Cr.P.C., by way of impugned order dated 7.7.2011.

4. Aggrieved thereby, the petitioner-complainant preferred the present revision petition to challenge the impugned order, invoking the provisions of section 401 Cr.P.C.

5. After hearing the learned counsel for the parties, going through the record with their valuable help and after considering the entire matter deeply, to my mind, there is no merit in the instant revision petition in this context.

6. As is clear that the trial Judge has dismissed the application u/s. 319 Cr.P.C. of the prosecution, by means of impugned order, which, in substance, is as under (Para 4):-

In his original complaint Ex. PA dated 13.11.2010 as well as in the capacity as PW 1 in the court, the complainant has asserted that the accused Braham Prakash while chasing him had trespassed into his house and then struck a kulhari blow at his back but the perusal of the MLR of the complainant Rakesh Kumar clearly shows that the suffering of the abovesaid injury by the complainant on his back with blunt or sharp edged weapon has not been mentioned anywhere.

Similarly, the complainant Rakesh Kumar in his original complaint as well as in the capacity of PW 1 in the court has stated that the accused Nirmala having a jaily in her hands had caused a jaily blow on his left hand but again the suffering of the aforesaid injury on the person of the complainant ha snot been mentioned anywhere in his MLR placed on the record of this file.

Therefore, in these circumstances, the active participation of the aforesaid two accused and the attribution of specific injuries to them by the complainant cannot be held worth of according any credence that too especially in the circumstances when it is already a well settled proposition of law that the trial court stands burdened with a heavy responsibility to ensure at the time of dealing with an application u/s 319 Cr.P.C. that the evidence which has come on record is quality evidence and not merely an allegation on the basis of which such a summoning can be made and there should be sufficient evidence to suggest involvement and the commission of offence by the persons sought to be summoned. This court is supported its view aforesaid from the ratio of law laid down in the citation i.e Ganesha Vs. State of Haryana and Another, wherein the Hon''ble Punjab & Haryana

High Court expressed the similar views.

7. In other words, the trial Court, after taking into consideration the inherent contradictions in the ocular version contained in the FIR, statement (Annexure P6) of PW 1 complainant and the medical evidence, has examined the matter in the right perspective and correctly did not summon the respondents as additional accused to face the trial along with their other co-accused. The learned counsel for petitioner did not point out any reason, much less cogent, to interfere in the impugned order in this respect.

8. There is another aspect of the matter, which can be viewed from entirely a different angle. It is not a matter of dispute that the trial Judge, while acquitting accused Sumit Kumar, convicted & sentenced accused Ram Chander and Jagdish for the commission of offences punishable under sections 307 and 325 read with section 34 IPC, by virtue of judgment of conviction and order of sentence dated 27.2.2012. In this manner, the main case already stands concluded. The contention of learned counsel for respondents that since the main trial has already concluded and cause of action u/s 319 Cr.P.C. does not survive, so, the matter becomes infructuous, has considerable force. On the contrary, the argument of learned counsel for petitioner-complainant that the conclusion of main trial, has got no bearing on the decision of the present petition, is neither tenable nor the observations of Hon''ble Apex Court in case Rajendra Singh Vs. State of U.P. and Another, are at all applicable to the facts of the instant case, wherein, the additional accused were stood already summoned u/s. 319 Cr.P.C. before the conclusion of the trial. On the peculiar facts & in the special circumstances of that case, it was observed that the fact that trial of co-accused had concluded and co-accused was acquitted, cannot have the effect of nullifying the order of summoning of the additional accused u/s. 319 Cr.P.C. Possibly, no one can dispute with regard to the aforesaid observations, but, to me, the same would not come to the rescue of petitioner-complainant in the present controversy.

9. As is evident from the record that in the instant case, the application filed by the prosecution/complainant u/s. 319 Cr.P.C. was dismissed by the trial Court, vide impugned order. That means, no order to summon the respondents as additional accused was passed by the Court before conclusion of the trial of main case. Once, no such order for summoning the respondents as additional accused was passed before the conclusion of the trial of main case, in that eventuality, the aforesaid observations of Hon''ble Supreme Court are not at all attracted to the facts of the present case, particularly when section 319 Cr.P.C. postulates that "where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed." The words "in the course of trial" are most important and carry a significant meaning in this relevant

connection. In this manner, the course (pendency) of the trial is a condition precedence for summoning the additional accused u/s. 319 Cr.P.C. and not otherwise. No person can legally be summoned as an additional accused to face the trial along with other co-accused under this section after the conclusion of the trial of main case. Therefore, the contrary submissions of learned counsel for petitioner-complainant "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances.

10. Meaning thereby, the trial Court has recorded the cogent grounds in this relevant connection. Such order, containing valid reasons, cannot possibly be interfered with by this Court, in the exercise of limited revisional jurisdiction u/s 401 Cr.P.C., unless and until, the same is illegal, perverse and without jurisdiction. Since no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioner-complainant, so, the impugned order deserves to be and is hereby maintained in the obtaining circumstances of the case.

11. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties. In the light of aforesaid reasons, as there is no merit, therefore, instant revision petition is hereby dismissed as such.