Dharam Singh Vs State of Haryana and others

Crl. Revision No. 2668 of 2013 (O&M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 25, 2014

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 319#Penal Code, 1860 (IPC) â€" Section 148, 149, 302

Hon'ble Judges: Rekha Mittal, J

Bench: Single Bench

Advocate: Rakesh Dhiman, Advocate for the Appellant; Loveleen Dhaliwal Singla, Sr. DAG, Advocate for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Rekha Mittal, J.
The present petition lays challenge to order dated 3.8.2013 passed by the Additional Sessions Judge, Rohtak whereby

the application u/s 319 of the Code of Criminal Procedure (in short ""Cr.P.C."") for summoning Ranbir Singh son of Balbir, Vinod and Manoj sons

of Ram Chander and Ram Chander son of Bhim Singh as additional accused to face trial pertaining to FIR No. 298 dated 2.8.2011 for offence

under Sections 148, 149, 302 of the Indian Penal Code (in short ""IPC""), has been dismissed.

2. Counsel for the petitioner contends that the reasoning adopted by the trial court in dismissing the application cannot stand the test of judicial

scrutiny, therefore, the impugned order is liable to be set aside. He has pointed out that the trial court has dismissed the application primarily on

two counts that the investigating officer has not been examined to state as to on what basis the persons sought to be summoned as additional

accused were found innocent during investigation and further the court will summon a person as an accused if it is satisfied from the materials on

record that there is sufficient material which would lead to conviction of the person sought to be summoned. It is argued with vehemence that if the

trial court was of the opinion that examination of the investigating officer is required for disposal of the application, the court could keep the

application pending subject to examination of the investigating officer but non-examination of the investigating officer cannot become foundation for

dismissal of the application. According to counsel, in view of the judgment of the Constitution Bench of the Hon''ble Supreme Court of India in

Hardeep Singh Vs. State of Punjab and Others etc. etc., the standard of satisfaction to be recorded by the trial court for summoning an additional

accused is certainly short of materials on record leading to conviction of the person sought to be summoned.

3. Counsel for the State of Haryana has endorsed the submissions made by counsel for the petitioner.

4. Respondent No. 2 to 5 have not appeared in the Court to controvert the plea of the petitioner.

5. I have heard counsel for the parties and perused the records.

6. There cannot be any dispute about the settled position of law that power u/s 319 Cr.P.C. is extraordinary in nature and the discretionary power

u/s 319 Cr.P.C. is to be exercised sparingly and with circumspect. A bare reading of the impugned order passed by the trial court makes it evident

that the trial court has refused to summon the additional persons on two counts. Firstly, it has been held that it was the duty of the prosecution to

examine the investigating officer as a witness to prove as to why Ranbir and others were found innocent and have not been implicated in the

present case. It was further held that in the application as well as in the statement of Dharam Singh PW-1 it has not come on record as to why the

investigating officer found them innocent and how they should be summoned in the present case. Another reason which weighed with the trial court

is that the court can summon a person as an accused if it is satisfied on the basis of material on record that it would reasonably lead to conviction of

the person sought to be summoned. However, in the concluding para, the court has held that there is no sufficient material against the persons

sought to be summoned.

7. So far as non-examination of the investigating officer is concerned, the trial court was competent to examine the witness before disposing of the

application for non-examination of the investigating officer as to why Ranbir Singh and others were found innocent cannot be a ground to dismiss

the application.

8. The Constitution Bench in Hardeep Singh''s case (Supra) while answering question No. 2 in regard to satisfaction required to invoke power u/s

319 Cr.P.C. held that it should be more than a prima facie case required at the time of framing of charge but short of leading to conviction of the

person sought to be summoned even if evidence remained unrebutted. Though the learned trial court in the concluding para of the order has held

that there is no sufficient material against Ranbir and others for summoning them but the reasons which weighed in the mind of the court cannot

become foundation for dismissal of the application. In this view of the matter, I find force in the contention of the petitioner that the order passed by

the trial court is erroneous and liable to be set aside.

9. In view of what has been discussed hereinabove, the petition is allowed, impugned order dated 3.8.2013 is set aside and the matter is remitted

to the trial court for decision of the application afresh, in accordance with law. The learned trial court is directed to examine the case in view of

ratio laid down in Hardeep Singh"s case (supra). The trial court shall be at liberty to examine any other witness whose evidence appears to be

material for disposal of the application. However, nothing stated in this order shall be taken as an expression of opinion on the merits of the

controversy which shall be appreciated by the trial court in view of evidence on record.