
(2010) 09 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Case No : C.R.M. M. No. 7830 of 2010 (O and M)

Ashwani Kumar and Another

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 311, 482

Citation : (2010) 09 P&H CK 0081

Hon'ble Judges : Sabina, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sabina, J.—This petition has been filed u/s 482 of the Code of Criminal Procedure (Cr.P.C. for short) for quashing of order dated 2.3.2010

(Annexure P-3) passed by the Sessions Judge, Kurukshetra, whereby the application moved by the prosecution u/s 311 Cr.P.C. for summoning of

Kewal Krishan, Dev Raj and Vivek Behal @ Jangi for examining them Pws by way of additional evidence was allowed.

2. Learned senior counsel for the Petitioners has submitted that the names of the witnesses Kewal Krishan, Dev Raj and Vivek Behal @ Jangi

were not mentioned in the list of prosecution witnesses. The statements of the said witnesses were also not recorded during investigation u/s 161

Cr.P.C. In these circumstances, the said three persons could not be summoned as witnesses to depose before the trial Court.

3. Learned State counsel, on the other hand, has submitted that it was a case of version and cross-version. In the cross-version case, the

witnesses, now sought to be summoned, have been arrayed as accused.

4. After hearing learned Counsel for the parties, I am of the opinion that the present petition deserves dismissal.

5. Learned trial Court, while allowing the application for summoning Kewal Krishan, Dev Raj and Vivek Behal @ Jangi as witnesses, in para Nos.

9 to 11 of the impugned judgment, has observed as under:

After hearing the arguments of both the sides and going through the case file, it is clear that accused Ashwani Kumar, while appearing in the

witness box in the cross-case had proved his statement Ex.P1 the copy of which has also been placed on this file. If, we go through this statement,

it is prima facie clear that Kewal Krishan, Dev Raj and Vivek Behal @ Jangi were present at the time of occurrence and also caused the injuries to

the members of the accused party in the case in hand. If we go through the endorsement of the police dated 12.10.2007 on the statement of

Ashwani Kumar, it is clear that the occurrence of the case in hand and that of cross-case lodged on the complaint of accused Ashwani Kumar,

was of one and the same time, date and place and i.e. Why only one FIR bearing No. 375 dated 9.10.2007 was taken into consideration and no

fresh FIR was recorded on the basis of the statement of Ashwani Kumar.

When the case in hand as well as the cross-case are of the same date, time and place, then it is no understandable as to why, the investigating

officer had not shown all the accused of the cross-case namely Kewal Krishan etc. as witnesses. This, in my opinion, was the gross negligence on

the part of the investigating officer which cannot be allowed to stand in imparting the justice to the parties. The Hon"ble Apex Court in Kernel

Singh v. State of MP 1995(3) RCR (Cri.) 526 has held that if the investigation is conducted by the investigating officer in a defective manner, then

in such a case, the court has to be circumspect in evaluating the evidence but it would not be right in acquitting the accused solely on account of

defect and to do so would tantamount to playing into the hands of investigating officer.

Under Section 311 Cr.P.C. the Court has power to summon any witness of its own accord to arrive at truth when such witness is in position to

speak important relevant facts and whose evidence appears to be essential to the just decision of the case. In this regard, the reliance can also be

placed on the observations made in Hanuman Ram v. The State of Rajasthan and

Ors. 2008 (4) RCR (Cri)823 (SC), Iddar and Ors. v. Aibida

2007 (3) RCR (Cri) 909 SC and Himanshu Singh Sabharwal v. State of MP and Ors. 2008(2) RCR (Cri) 267 SC. The observations made by

the Hon"ble Orissa High Court in Karam Chand Mukhi and Others Vs. Santosh Pradhan and Another, cited on behalf of the accused of this case

are of no help to the case of the accused persons because the facts of the case in hand are altogether different than those of the cited one because

in the cited case, none of the persons who were to be examined as witnesses outside the list of the charge-sheeted witnesses, was informant/

complainant or subject of victim of alleged criminal action and were, thus, not party to the proceedings and on those accounts, the application

moved by such persons was dismissed. But when Kewal Krishan, Dev Raj and Vivek Behal @ Jangi have been made accused in the cross-case

pertaining to the same occurrence then their presence has been admitted by the accused of this case. Therefore, they are the natural witnesses of

this crime. As such, the examination of these witnesses or any of them is necessary for arriving at the proper decision of the case in hand.

6. The reasons given by the trial Court while ordering the summoning of PWs Kewal Krishan, Dev Raj and Vivek Behal @ Jangi are sound

reasons. Since the said witnesses have been arrayed as accused in a cross-case, their presence at the spot stands admitted by the Petitioners. In

these circumstances, no ground for interference by this Court is made out.

7. Accordingly, this petition is dismissed.