
(1977) 12 P&H CK 0006
In the Punjab And Haryana At Chandigarh

Gurcharan Singh	Vs	APPELLANT
The State of Punjab		RESPONDENT

Date of Decision : 16-12-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 397, 482
Penal Code, 1860 (IPC) — Section 427, 440, 441

Citation : (1977) 12 P&H CK 0006

Hon'ble Judges : S.S. Sidhu, J

Bench : Single Bench

Judgement

S.S. Sidhu, J.—Gurcharan Singh accused has filed this application u/s 482, Cr. P.C. for quashing the order dated 19th May, 1977 passed by the second Additional Sessions Judge, Gurdaspur (Shri R. K. Syngal) in case State v. Gurcharan Singh and Ors. now pending in the Court of the Judicial Magistrate, 1st Class, Batala (Shri Ajay Kumar), whereby he accepted the revision petition filed against the order dated 23rd Nov. 1976, of the trial Court by which Gurcharan Singh accused had been discharged and setting aside that order he sent the case back to the trial Court with the direction that a charge against Gurcharan Singh accused be also framed and the case be then disposed of according to law.

2. The facts of the case which are necessary for the disposal of this petition may briefly be stated as follows. The police presented a challan under Sections 440 and 427, I.P.C., against the three accused, namely. Gurcharan Singh, Pritam Singh and Baldev Raj in the trial Court. That Court, after hearing the Additional Public Prosecutor, appearing for the State, and the counsel for the accused and also after going through the documents placed on the file found that a prima facie case under Sections 440 and 441, I.P.C. was made out against Pritam Singh and Baldev Raj accused while no such prima facie case was made out against Gurcharan Singh accused. This finding was given by the trial Court because the name of Gurcharan Singh did not find mention in the First Information Report and that his name, as being one of the participants in the commission of the

crime, found mention for the first time in the statement of one Chhinda recorded u/s 161, Cr. P.C. after a period of about six months of the occurrence. Accordingly, the trial Court, vide its order dated 23rd Nov. 1976, held that no prima facie case was made out against Gurcharan Singh while a prima facie case under Sections 440 and 441, IPC, was made out only against Baldev Raj and Pritam Singh, and in the result, it discharged Gurcharan Singh while charged the other two accused under Sections 440 and 441, IPC. Feeling aggrieved against the order of the trial Court, the State went in revision before the learned Additional Sessions Judge, Gurdaspur. The learned Additional Sessions Judge, after hearing the counsel for the parties, passed the impugned order dated 19th May, 1977. In that order, it was held by the learned Additional Sessions Judge that no doubt the First Information Report was silent about the third accused, namely, Gurcharan Singh, but since Buta Singh, Balwant Singh and Munshi Singh, in their statements recorded by the investigating Officer u/s 161, Cr. P.C. during investigation of the case, stated that all the three accused, namely, Baldev Raj, Pritam Singh and Gurcharan Singh had committed trespass and damaged the complainant's crop, certainly from that material a prima facie case against all the accused, including Gurcharan Singh, was made out. He also held that the learned trial Court wrongly ignored the statements of the witnesses recorded u/s 161, Cr. P.C. so far as Gurcharan Singh accused was concerned and, therefore there was no justification for the trial Court to discharge Gurcharan Singh accused. He further held that the order dated 23rd Nov. 1976, of the trial Court by which Gurcharan Singh was discharged was not an interlocutory order, because by that order the case against Gurcharan Singh stood disposed of. In the end, the learned Additional Sessions Judge, vide his impugned order, set aside the order dated 23rd Nov. 1976, passed by the trial Court, whereby it had discharged Gurcharan Singh accused and sent the case back to the trial Court with the direction that the charge against Gurcharan Singh be also framed and the case be then disposed of according to law.

3. Two points have been raised in this application which require determination by this Court. The first is that the order dated 23rd Nov. 1976, passed by the trial Court being an interlocutory order, no revision lay against it and, accordingly, the impugned order of the Additional Sessions Judge is not sustainable. The second point is that the material placed on the file shows that no prima facie case is made out against Gurcharan Singh accused-petitioner. In view of this, it has been argued on behalf of the petitioner that the learned Additional Sessions Judge wrongly set aside the order dated 23rd Nov. 1976, of the trial Court and accordingly it wrongly directed that a charge against Gurcharan Singh be also framed and the case be then disposed of according to law. However, I find no merit in any of the above two points which have been raised in this application.

4. As far as the first point is concerned, it may be pointed out that any order which substantially affects the rights of the accused or decides against the rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court or the Sessions Court against that order. The orders which

affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory orders. Hence there is no bar for the Court of Sessions Judge and the High Court to hear revision filed against such an order. This view finds support from the pronouncement of their Lordships of the Supreme Court in *Amar Nath and Others Vs. State of Haryana and Another*, wherein it has been held as under (at pp. 1894-95 of Cri LJ):

...It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie u/s 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.

In the present case, the order of the trial Court dated 23rd Nov., 1976, by which Gurcharan Singh was discharged was an order which certainly decided the rights of the parties and, as such, was not an interlocutory order and, therefore, revision against that order either to the Court of Sessions Judge (which includes the Court of the Additional Sessions Judge, as in this case the revision was heard and decided by the Court of the Additional Sessions Judge), or to High Court, was not barred at all. Accordingly, the decision given by the learned Additional Sessions Judge to that effect, vide his impugned order, is upheld.

5. As far as the second point is concerned. I fully agree with the observations made by the learned Additional Sessions Judge in his impugned order that not only the First Information Report but even the statements of the witnesses recorded u/s 161, Cr. P.C., although the same may have been recorded after some delay, during investigation of the case, are to be taken into consideration and if from all that material, a prima facie case is made out against the accused, then the Magistrate, has no option but to frame a charge against the accused. In the present case, the perusal of the statements of Chhinda, Buta, Balwant Singh and Munshi Singh, recorded u/s 161, Cr. P.C., during investigation of the case, shows that Gurcharan Singh too had participated in the commission of the offence along with Pritam Singh and Baldev Raj and therefore, a prima facie case under Sections 440 and 441, T. P. C., is made out against him also. In view of this matter, the learned Additional Sessions Judge, vide his impugned order dated 19th May, 1977, rightly set aside the order dated 23rd Nov., 1976 passed

by the trial Court in so far as it had directed for the discharge of Gurcharan Singh and rightly sent the case back to the trial Court with the direction that a charge against Gurcharan Singh accused be also framed and the case be then disposed of according to law.

6. For the reasons given above, this application fails which is hereby dismissed and the impugned order dated 19th May, 1977, passed by the learned Second Additional Sessions Judge, Gurdaspur, is affirmed. The parties, through their counsel, are directed to appear in the Court of the Judicial Magistrate. First Class, Batala (Shri Ajay Kumar) on 20th Jan., 1978.