
(2011) 02 P&H CK 0281
In the Punjab And Haryana At Chandigarh
Case No : CRR No. 2801 of 2010 (O and M)

Raj Narain Yadav

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 239, 245, 319, 398
Penal Code, 1860 (IPC) — Section 120(B), 408, 420, 467, 468

Citation : (2011) 02 P&H CK 0281

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Alok Singh, J.—Present petition is filed challenging the order dated 28.9.2010 passed by Additional Sessions Judge, Kurukshetra, thereby allowing the revision filed by one of the co-accused and directing to summon the present revisionist u/s 319 Code of Criminal Procedure to face trial for an offence under Sections 408/420/467/468/471/120B of the Indian Penal Code.

2. Brief facts of the present case are that FIR was registered on 23.9.1996 on the behest of the present revisionist (complainant) under Sections 408/420/467/468/471/120B IPC at Police Station Shahabad, District Kurukshetra. However, during the investigation, name of the complainant/revisionist was included in the array of accused and the challan was filed before the Magistrate in the year 1996. Thereafter, on further investigation present revisionist was not found involved and supplementary challan was filed by the police placing name of the revisionist in column 2. However, learned Magistrate did not agree with the supplementary challan placing name of the revisionist in column 2 and refused to discharge the revisionist and consequently charges were framed against the revisionist. Order of the learned Judicial Magistrate dated 17.10.2000 refusing to discharge the revisionist and deciding to frame charges against the revisionist was challenged before the learned Sessions Judge in

Criminal Revision No. 14 of 2001. Learned Additional Sessions Judge, Kurukshetra (Revisional Court) vide order dated 14.2.2003 was pleased to set aside the order passed by the learned Judicial Magistrate and has directed to discharge the revisionist. Order of the learned Revisional Court dated 14.2.2003 was not challenged and has attained the finality.

3. In the trial before the Magistrate after the evidence of the prosecution, accused has moved an application u/s 319 Code of Criminal Procedure to summon the revisionist as an additional accused to face the trial. Application moved by co-accused Suraj Bhan was dismissed by the learned Magistrate vide order dated 9.9.2010. Co-accused Suraj Bhan thereafter has approached the Sessions Judge by way of filing revision No. 53/2000, which was allowed by the Additional Sessions Judge vide order dated 28.9.2010. Hence present revision.

4. I have heard learned Counsel for the parties and have perused the record.

5. Mr. Ashish Aggarwal, learned Counsel for the Petitioner, has vehemently argued that initially challan was submitted against the revisionist making him as one of the accused thereafter revisionist was discharged by the revisional Court vide order dated 14.2.2003 in Criminal Revision No. 14/2001, therefore, revisionist cannot be summoned once again for the same offence at the subsequent stage during the trial of the same case. Mr. Aggarwal further submits that all the documents now relied upon by the Revisional Court while summoning the revisionist were before the Revisional Court in Criminal Revision No. 14 of 2001 while discharging the revisionist u/s 239 Code of Criminal Procedure., therefore, same set of evidence cannot be relied upon at the subsequent stage to say revisionist has committed the offence for which he has already been discharged. Mr. Ashish Aggarwal has placed reliance on the judgments of the Hon'ble Apex Court in the matter of Sohan Lal and others Vs. State of Rajasthan, Lok Ram v. Nihal Singh 2006(2) RCR 707 and Y. Saraba Reddy v. Puthur Rami Reddy and Ors., AIR 2007 SC (suppl) 981.

6. Mr. D.S. Bali, learned senior counsel, assisted by Mr. Roop Chand Chaudhary, has argued that discharge by the police by not filing the challan or by the Court at the initial stage shall not preclude the Court to invoke Section 319 Code of Criminal Procedure., if from the evidence placed before the Court later on involvement of the accused in the offence is proved. Mr. Bali has further argued words used in Section 319 Code of Criminal Procedure "in course of any inquiry into, or trial or, an offence it appears from the evidence that any person not being the accused has committed any offence", are very important. Mr. Bali states that since at the subsequent stage revisionist was not the accused, hence revisional Court was well within its jurisdiction to invoke Section 319 Code of Criminal Procedure to summon the revisionist.

7. To contra Mr. Gaurav Dhir, learned Deputy Advocate General, Haryana, has supported the arguments of the learned Counsel for the revisionist and has argued that during the further investigation revisionist was not found involved in

the offence and from the evidence tendered by the prosecution complicity of the revisionist is not proved, hence on the basis of documentary evidence filed by the co-accused summoning of the revisionist is not proper.

8. Hon''ble Apex Court in the matter of Sohan Lal (supra) in para Nos. 30 & 33 has held as under:

30. The question therefore is whether the necessity of making a further inquiry as envisaged in S. 398 could be obviated or circumvented by taking resort to Section 319. As has already been held by this Court, there is need for caution in resorting to S. 319. Once a person was an accused in the case he would be out of reach of this section. The word "discharge" in S. 398 means discharge of an offence relating to the charge within the meaning of Ss. 227, 239, 245 and 249. Refusing to proceed further after issue of process is discharged. The discharge has to be in substance and effect though there is no formal order. The language of the section does not indicate that the word "discharge" should be given a restricted meaning in the sense of absolute discharge where the accused is set at liberty after examination of the whole case."

33. The above views have to yield to what is laid down by this Court in the decisions above referred to. The provisions of Section 319 had to be read in consonance with the provisions of S. 398 of the Code. Once a person is found to have been the accused in the case he goes out of the reach of S. 319. Whether he can be dealt with under any other provisions of the Code is a different question. In the case of the accused who has been discharged under the relevant provisions of the Code, the nature of finality to such order and the resultant protection of the persons discharged subject to revision u/s 398 of the Code may not be lost sight of.

9. Hon''ble Apex Court in the matter of Lok Ram (supra) in para -5-No. 10 has held as under:

On a careful reading of Section 319 of the Code as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceeding on the evidence adduced that the person who have not been arryred as accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an accused, but not charge sheeted, can also be added to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the chargesheet or the case diary, because such materials contained in the charge sheet or the case diary do not constitute evidence. Of course, as evident from the decision reported in Sohan Lal and others Vs. State of Rajasthan, the position of an accused who has been discharged stands on a different footing.

10. Hon''ble Apex Court in the matter of Y. Saraba Reddy (supra) in para No. 12

once again has placed reliance on the judgment in the matter of Sohan Lal (supra).

11. From the judgments of the Hon''ble Apex Court (supra), it is, thus, clear that such person even though had initially been named as accused in the FIR but not chargesheeted, can also be added to face trial, if on the basis of evidence adduced before the Court involvement of such person appears to the Court, however, Section 319 Code of Criminal Procedure shall not be invoked against the person who has been chargesheeted by the police but later on discharged by the Court either u/s 227 or u/s 239 or u/s 245 Code of Criminal Procedure Section 398 Code of Criminal Procedure shall not be obviated or circumvented by invoking Section 319 Code of Criminal Procedure Of course, such accused, who has been discharged under any of the provisions of the Code of Criminal Procedure, can be dealt with in accordance with Section 398 Code of Criminal Procedure but -6-in any circumstances shall not be summoned u/s 319 Code of Criminal Procedure

12. In the present case, learned Sessions Judge while allowing the revision directing to summon the revisionist u/s 319 Code of Criminal Procedure has not directed any inquiry by the C.J.M. or by the Magistrate as contemplated by Section 398 Code of Criminal Procedure and straightway directed the summoning of the revisionist, therefore, order impugned cannot be sustained in the eyes of law. Not only this, order of the discharge passed by the learned Sessions Judge (Revisional Court) at the earlier occasion on 14.2.2003 has attained the finality.

13. Consequently, present revision is allowed. Order impugned is set aside.