
(2016) 11 SHI CK 0064
In the High Court Of Himachal Pradesh
Case No : Cr.MMO No. 113 of 2014

Sh.Kuldeep

APPELLANT

Vs

State of HP

RESPONDENT

Date of Decision : 28-11-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 336, Section 337, Section 34, Section 427

Citation : (2017) 1 HimLR 596

Hon'ble Judges : Mr. P.S. Rana, J.

Bench : Single Bench

Advocate : Mr. B.S. Attri, Advocate, for the Petitioner; Mr. M.L. Chauhan, Addl. Advocate General and Mr. R.K. Sharma, Deputy Advocate General, for the Non-Petitioners

Final Decision : Disposed Off

Judgement

P.S. Rana, J.—Present petition is filed under Section 482 of the Criminal Procedure Code 1973 for quashing FIR No.9 of 2012 dated 24.5.2012 registered under sections 336,337, 427 read with section 34 IPC and for quashing consequential criminal proceedings pending before learned Chief Judicial Magistrate Kinnaur at Reckong Peo District Kinnaur HP. Brief Facts Of The Case:

2. It is alleged that on 24.5.2012 at about 1.30 PM at place Thophan within jurisdiction of police station Pooh accused persons being contractor and labour in furtherance of common intention of each others acted rashly and negligently and endangered human life and personal safety of others. It is alleged that accused persons committed blasting operation on Thophan Jangi road and caused hurt to Dara Singh, Amreek Singh and Raj Kumar by way of their negligent act. It is further alleged that accused persons also committed mischief by way of causing wrongful loss and damage to vehicle No. HP-06-2161 and totally damaged the vehicle by way of blasting operation.

3. Investigation conducted and criminal case filed against accused persons before

learned Chief Judicial Magistrate Kinnaur at Reckong Peo. Learned Chief Judicial Magistrate summoned accused persons under Sections 336, 337 and 427 IPC read with section 34 IPC. Learned Trial Court after hearing learned Public Prosecutor and learned Advocate appearing on behalf of accused persons framed charge against accused persons under section 336, 337, 427 read with section 34 IPC on dated 8.10.2014. Thereafter learned Chief Judicial Magistrate Kinnaur at Reckong Peo listed the case for prosecution evidence. Thereafter present petition filed by co-accused Kuldeep under section 482 code of criminal procedure.

4. Court heard learned Advocate appearing on behalf of petitioner and learned Additional Advocate General appearing on behalf of non-petitioners and also perused entire record carefully.

5. Following points arises for determination in present petition:

1. Whether petition filed under Section 482 Cr.PC is liable to be accepted as mentioned in memorandum of grounds of petition?

2. Final order.

Findings upon point No.1 with reasons.

6. Submission of learned Advocate appearing on behalf of petitioner that tender of blasting operation was given to M/s Amit Singla by Chief Engineer Deepak Project vide order dated 23.4.2010 and project operation was not allotted to accused person and on this ground petition be allowed is rejected being devoid of any force for reasons hereinafter mentioned. It is held that judicial finding relating to allotment of project by Chief Engineer Deepak Project to M/s Amit Singla cannot be given at this stage of case being complicated issue of fact and judicial finding would be given by learned Trial Court after giving due opportunity to both parties to lead evidence in support of their case in the trial of case. It is held that it is not expedient in the ends of justice to give judicial finding at this stage of case relating to complicated issue of fact.

7. Submission of learned Advocate appearing on behalf of petitioner that there was no nexus between petitioner and execution of blasting work and on this ground petition be allowed is rejected being devoid of any force for reasons hereinafter mentioned. It is held that judicial finding relating to the fact whether there was no nexus between petitioner and execution of blasting work cannot be given at this stage of case being complicated fact unless opportunity is granted to both parties to lead evidence in support of their case. It is held that judicial finding relating to complicated issue of fact will be given by learned Trial Court after giving due opportunity to both parties to lead evidence in support of their case in the trial of case.

8. Submission of learned Advocate appearing on behalf of petitioner that investigating officer with malafide intention exonerated contractor Mr. Amit Singla and his general attorney Sh Ashok Kumar Kataria and entire investigation is

illegal, unwarranted and based upon malafide intention just to fasten entire liability upon petitioner and on this ground petition be allowed is rejected being devoid of any force for reasons hereinafter mentioned. It is held that judicial finding relating to the fact that investigation was conducted by investigating officer with malafide intention just to exonerate original contractor Mr. Amit Singla and his general attorney Sh Ashok Kumar Kataria can not be given at this stage of case being complicated issue of fact. It is held that judicial finding relating to complicated issues of facts will be given by learned Trial Court after giving due opportunity to both parties to lead evidence in support of their case during trial of case.

9. Submission of learned Advocate appearing on behalf of petitioner that petitioner has been falsely implicated in present case which has caused grave miscarriage of justice to petitioner and on this ground petition be allowed is rejected being devoid of any force for reasons hereinafter mentioned. Judicial finding relating to the fact that petitioner has been implicated falsely in present case cannot be given at this stage of case unless opportunity is granted to both parties to adduce evidence in support of their case during trial of case.

10. Submission of learned Advocate appearing on behalf of petitioner that there is no material on record which prima facie established that petitioner was connected with alleged offence and oral statement of witnesses namely Dara Singh, Shiv Kumar, Vinod Kumar, Sanjay Sharma, Ashok Kumar, Ravinder Negi, Amrik Singh, Arjun Singh and Sharab Negi were incorrectly recorded by investigating officer in order to exonerate Sh Amit Singla real contractor and Sh Ashok Kataria general attorney of Sh Amit Singla and on this ground petition be allowed is rejected being devoid of any force for reasons hereinafter mentioned. Judicial finding to the fact that investigating officer did not record the statement correctly cannot be given at this stage of case. Judicial finding would be given by learned Trial Court after giving due opportunity to both parties to lead evidence in support of their case during trial of case.

11. Submission of learned Advocate appearing on behalf of petitioner that after perusal of entire FIR and after perusal of report submitted under section 173 Cr.PC at their face value there are no grounds for proceeding against coaccused Kuldeep and on this ground petition be allowed is rejected being devoid of any force for reasons hereinafter mentioned. Court has carefully perused statements of Dara Singh, Arjun Singh, Nemi, Shiv Kumar, Amrik Singh, Vinod Kumar, Ravinder Negi, Sanjay Sharma, Narayan Prasad, S.G.Narender, Vijay, Ashok Kumar, Lucky, ASI Jeet Ram, ASI Bhim Singh, ASI Kamal Dev, SHO Bihari Lal and M.C. police post and court has also perused documentaries evidence placed on record such as site plan, seizure memo, medical certificates of Raj Kumar, Ashok Singh and Dara Singh carefully. After perusal of statements of above stated prosecution witnesses placed on record and after perusal of above stated documentaries evidence placed on record it is held that there are sufficient grounds to proceed against petitioner under sections 336,337, 427 read with

section 34 IPC.

12. It is well settled law that at the stage of framing of charge meticulous consideration of evidence and other material is not required. See AIR 1980 SC 52 Supdt. & Remembrance of Legal Affairs West Bengal v. Anil Kumar. See AIR 1977 SC 2018 State of Bihar v. Ramesh Singh. See AIR 2001 SC 40 State of Delhi v. Gyan Devi. See AIR 2000 SC 665 State of M.P. v. S.B. Johari and others. See AIR 1981 SC 1548 Mohd Akbar Dar v. State of J&K. See AIR 1977 SC 2433 Yash Pal Mittal v. State of Punjab. It is held that it is the duty of learned Trial Court to appreciate oral testimonies and documents annexed with report during trial of criminal case. It is well settled law that controversial facts should not be decided by High Court before trial of criminal case. See 2008 (4) SCC 471 C.B.I v. K.M.Sharan. See 2000 (8) SCC 329 State of Delhi v. Gyan devi . See AIR 2013 SC 633 Ajay Kumar Parmar v. State of Rajasthan. In view of above stated facts and case law cited supra point No.1 is answered in negative.

Point No.2 (Final order).

13. In view of findings upon point No.1 petition filed under section 482 Cr.PC is dismissed. Parties are directed to appear before learned Trial Court on 19.12.2016. Observations will not effect merits of the case in any manner. File of learned Trial Court along with certify copy of order be sent back forthwith. Cr.MMO No. 113 of 2014 is disposed of. All pending application(s) if any also disposed of.