

(1992) 09 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4705-M of 1992

Yashpal alleged to be Billu

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 03-09-1992

Acts Referred:

Citation : (1993) 2 RCR(Criminal) 400

Hon'ble Judges : G.S.Chahal, J

Advocate : Azad Singh, S.S. Narula, R.S. Cheema, Advocates for appearing Parties

Judgement

G.S. Chahal, J.

1. By means of this petition under Section 482 Cr.P.C. petitioner seeks quashing of the JUDGMENT passed by Sh. V.M. Jain, Sessions Judge, Rohtak, dated March 25, 1992 (Annexure P3) disallowing the prayer of the petitioner for holding an identification parade in respect to a case FIR No. 30 dated March 4, 1990 registered at Police Station Beri for offences under Sections 302, 324 read with Section 34 IPC.

2. The FIR was registered on the basis of a statement made by Smt. Channo wife of deceased Mir Singh. Petitioner claims that he has been falsely implicated in this case. He has been named along with three other persons namely Babbar, Hoshiara and Billu. Name of the petitioner was not mentioned in the FIR and it was claimed that he was Yashpal @ Billu. Petitioner claiming that Smt. Chhanno, the injured witness, does not know him nor can recognise him, moved an application Annexure P1 for holding of an identification parade before Amarjit Choudhary, J. on his visit to District Jail, Rohtak. The Hon'ble Judge gave the following direction :

"Arrangements for identification parade be made/arranged if so permissible.

Sd/

27.2.92."

CJM Rohtak.

The petitioner thereafter moved an application Annexure P2 before the Sessions Judge, Rohtak, for appropriate direction for holding of an identification parade. This prayer of the petitioner was declined by the Sessions Judge

3. Since the order had been passed by Amarjeet Choudhary, J. for arrangement of identification parade, if such prayer was permissible, the learned Sessions Judge should have ordered holding of identification parade without entering into controversy as to the eyesight of Smt Chhanno and the fact of the petitioner having not been named in the FIR (assuming that Billu was an alias of the petitioner). There is, thus, force in the contention of the learned counsel that refusal of identification parade was refusal to him to promote the defence, he may set up at trial. In *Joginder Singh v. The Punjab State*, 1973 PLR 786, the following observations were made :

"If the prosecution witnesses already knew the petitioner and they were unable to identify him in an identification parade, then there would be greater reason for discarding the testimony of such witnesses. Denial of this right to the petitioner tantamounts to stopping him from setting up a defence which he wants to set up in a criminal case. It is against the elementary principles of criminal law."

This view was followed in *Cr. M. 3391M of 1987 Balwinder Singh and another v. State of Punjab*.

4. in *Jadunath Singh & anr. v. State of U.P.* CrL LJ 305, their Lordships made, the following observation :

It seems to us that it has been clearly laid down by this Court in Criminal Appeal No. 92 of 1956, dated 15/11/57 (SC) that the absence of test identification in all cases is not fatal and if the accused person is well known by sight it would be waste of time to put him up for identification. Of course if the prosecution fails to hold an identification on the plea that the witnesses already knew the accused well and it transpires in the course of the trial that the witnesses did not know the accused previously the prosecution would run the risk of losing its case. It seems to us that if there is any doubt in the matter the prosecution should hold an identification parade specially if an accused says that the alleged eyewitnesses did not know him previously. It may be that there is no express provision in the Code of Criminal Procedure enabling an accused to insist on an identification parade but if the accused does make an application and that application is turned down and it transpires during the course of the trial that the witnesses as pointed out above the prosecution will, unless there is some other evidence run the risk of losing the case on this point."

5. There is, thus, no legal bar to the holding of identification parade especially as the petitioner was claiming that Chhanno does not know him and he has been falsely named. The identification parade being permissible, the Sessions Judge

was bound to comply with the orders passed by Amarjeet Choudhary, J. on February 27, 1992.

6. I hereby allow the petition and quash the impugned order and give direction to the Sessions Judge to arrange for an identification parade expeditiously on receipt of this order.