

Before Rameshwar Singh Malik, J.

NARESH KUMAR—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

Crl. Rev. No.2421 of 2012

August 28, 2012

*Code of Criminal Procedure, 1973 - S.401 - Scope of revision
- Complainant/Petitioner filed application u/s 319 Cr.P.C. for
summoning additional accused - Sessions Judge dismissed the
application by holding that neither there was sufficient material nor
any compelling reason existed for taking cognizance against
respondents - Revision filed - Held - Revisional jurisdiction is limited
- Can be exercised only when there is patent illegality or perversity
- Order of Sessions judge upheld.*

Held, that revisional jurisdiction of this Court is a limited one. The revisional jurisdiction of this Court can be exercised only when the impugned order suffers from patent illegality or perversity. As discussed above, the impugned order does not suffer from any patent illegality. In this view of the matter, no case has been made out for interference which may fall within the scope of revisional jurisdiction of this Court. Further, no prejudice, much less serious prejudice thereof has been shown which might have been caused to the petitioner. Since the revisional jurisdiction of this Court is a limited one and no illegality has been pointed out in the approach adopted by the learned Sessions Judge while passing the impugned order, present one is not a fit case for exercising the revisional jurisdiction.

(Para 18)

Ashok Kumar Sharma, Advocate, *for the petitioner.*

RAMESHWAR SINGH MALIK, J. (ORAL)

CRM No.48299 of 2012

- (1) Application is allowed subject to all just exceptions.
- (2) Criminal application stands disposed of.

CRM No.48300 of 2012

(3) Applicant seeks condonation of delay of 5 days in filing the revision petition.

(4) Having heard the learned counsel for the applicant, application is allowed, for the reasons stated therein and delay of 5 days in filing the revision is condoned.

(5) Application stands allowed.

CRR No.2421 of 2012

(6) The instant criminal revision is directed against the order dated 12.05.2012 passed by the learned Sessions Judge, Kaithal, thereby, dismissing the application filed under Section 319 of the Code of Criminal Procedure (**for short 'Cr.P.C.'**) declining the summoning of respondents No.2 to 4 as additional accused.

(7) Facts first. Shorn of detailed factual background of the case, it would suffice to refer to the relevant facts sufficient for disposing of the short issue involved in the instant criminal revision petition. During the course of criminal trial arising out of FIR No.171 dated 04.07.2011, under Section 302/34 of the Indian Penal Code (**for short 'IPC'**), registered at Police Station Pundri, District Kaithal, an application under Section 319 Cr.P.C. was moved before the learned Sessions Judge, Kaithal for summoning respondents No.2 (Balinder), 3 (Narinder) and 4 (Smt. Roshni Devi), as additional accused.

(8) After hearing the learned counsel for the parties and going through the record of the case, the learned Sessions Judge came to the conclusion that neither there was sufficient material nor any compelling reason exists for taking cognizance against respondents No.2 to 4. Accordingly, the application under Section 319 Cr.P.C. was dismissed vide impugned order dated 12.05.2012- Annexure P-2.

(9) Feeling aggrieved against the above said order dated 12.05.2012, the petitioner has approached this Court by way of instant criminal revision petition. That is how, this Court is seized of the matter.

(10) Learned counsel for the petitioner vehemently contended that the learned trial Court has miserably failed to appreciate the relevant material available on the record of the case which was sufficient to allow the application under Section 319 Cr.P.C. summoning the private respondents No.2 to 4 as additional accused. He further submits that since the approach adopted by the learned trial Court was patently illegal, the impugned order has resulted in miscarriage of justice and the same was liable to be set aside. Thus, he prayed for setting aside the impugned order and for acceptance of the revision petition.

(11) I have heard learned counsel for the petitioner and with his able assistance, have gone through the record of the case.

(12) After giving my thoughtful consideration to the contentions raised and keeping in view the peculiar fact situation of the present case, this Court is of the considered opinion that present one is not a fit case for exercising the revisional jurisdiction at the hands of this Court. I say so for more than one reasons, being recorded hereinafter.

(13) The twin questions of law that arise for the consideration of this Court are;

(i) Whether the learned Sessions Judge has committed any patent illegality while not exercising his discretionary jurisdiction under Section 319 Cr.P.C. in declining to summon private respondents No.2 to 4 as additional accused, vide impugned order dated 12.05.2012?

(ii) What is the scope of revisional jurisdiction of this Court under Section 401 Cr.P.C. and whether the instant case calls for interference in exercise of the revisional jurisdiction?

(14) Taking the first question first, this Court critically examined the impugned order and the other material available on record of the case. Having carefully gone through the impugned order passed by the learned Sessions Judge, this Court is of the considered view that the impugned order does not suffer from any patent illegality or perversity. The learned Sessions Judge has passed the impugned order proceeding on a factually correct and legally justified approach assigning convincing reasons rightly following the law laid down by the Hon'ble Supreme Court.

(15) It is a matter of record that the case was registered on the statement (Ex.P-C) made by the petitioner-complainant. However, when the complainant was examined in the Court as PW-3, he tried to take a complete somersault giving altogether different version totally contrary to his earlier statement Ex.P-C, so as to seek the summoning of private respondents No.2 to 4 as additional accused with the aid of Section 319 Cr.P.C. This important aspect to the matter has been rightly appreciated by the the learned Sessions Judge while referring to the scope of Section 319 Cr.P.C. and the law laid down by the Hon'ble Supreme Court in this regard. Accordingly, answer to the first question posed above, has to be in the negative. The learned Sessions Judge rightly arrived at the conclusion that neither there was sufficient material nor any compelling reasons were existing for summoning the private respondents No.2 to 4 as additional accused.

(16) The view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in *Municipal Corporation of Delhi versus Ram Kishan Rohtagi and others (1)*, *Guriya @ Tabassum Tauquir versus State of Bihar (2)*, *Kailash versus State of Rajasthan and another (3)* and *Lal Suraj @ Suraj Singh versus State of Jharkhand (4)*. After a careful consideration of the matter, this Court is of the view that since no sufficient material has been brought to the notice of this Court to take a different view than the one taken by the learned Sessions Judge. The impugned order has not been found to be suffering from any illegality.

(17) It is also the settled proposition of law that before ordering the summoning of any person as an additional accused under Section 319 Cr.P.C., the Court is to record its satisfaction that there was possibility of recording a judgment of conviction. Further, the power under Section 319 Cr.P.C. being a special provision which seeks to meet an extraordinary situation, required to be exercised very sparingly and with circumspection. Thus, the first question of law noted above, is answered against the petitioner.

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- (1) (1983) 1 SCC 1
 - (2) (2007) 8 SCC 224
 - (3) 2008 (2) RCR (Cr.) 200
 - (4) (2009) 2 SCC 696

(18) So far as the second question is concerned, revisional jurisdiction of this Court is a limited one. The revisional jurisdiction of this Court can be exercised only when the impugned order suffers from patent illegality or perversity. As discussed above, the impugned order does not suffer from any patent illegality. In this view of the matter, no case has been made out for interference which may fall within the scope of revisional jurisdiction of this Court. Further, no prejudice, much less serious prejudice thereof has been shown which might have been caused to the petitioner. Since the revisional jurisdiction of this Court is a limited one and no illegality has been pointed out in the approach adopted by the learned Sessions Judge while passing the impugned order, present one is not a fit case for exercising the revisional jurisdiction.

(19) The view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in *Vimal Singh versus Khuman Singh and another* (5), *Sheetla Parsad and others versus Srikant and another* (6), and *Ashish Chadha versus Smt. Asha Kumari* (7). In view of the law laid down by the Hon'ble Supreme Court, the revisional jurisdiction of this Court is a limited one and can be exercised only in exceptional cases. Since the instant one is not one of the exceptional cases warranting interference at the hands of this Court while exercising its revisional jurisdiction, the second question of law posed above is answered, accordingly.

(20) Reverting back to the facts of the present case, it is found that the order under revision does not suffer from glaring illegality nor it has caused miscarriage of justice. Neither it is found that the learned trial court has exceeded its jurisdiction nor it has been shown that any clinching evidence has been over looked. Thus, considering the totality of facts and circumstances of the case noted above, coupled with the reasons aforementioned, it is unhesitatingly held that the present criminal revision petition is devoid of any merit, without any substance and it must fail.

(21) Accordingly, the instant criminal revision petition is ordered to be dismissed.

J.S. Mehndiratta

(5) 1998 (4) RCR (Cr.) 423

(6) 2010 (1) RCR (Cr.) 382

(7) 2012 (1) RCR (Cr.) 94 SC.