

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No.M-14557 of 2015

Date of decision:- May 06, 2015

Dalwinder Kaur

.....Petitioner...

Vs.

State of Punjab and others

....Respondents...

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Satbir Rathore, Advocate,
for the petitioner.

JASPAL SINGH, J.

Instant petition has been preferred under Section 482 of the Code of Criminal Procedure (for brevity, 'Code') by Dalwinder Kaur-petitioner seeking quashing of impugned orders dated April 21, 2015 (Annexure P-5) passed by Id. Additional Sessions Judge, Hoshiarpur whereby order dated March 22, 2014 (Annexure P-4) passed by Ld. Judicial Magistrate, First Class, Dasuya vide which an application moved under Section 319 of the Code for summoning respondents No. 2 and 3 as an additional accused, has been dismissed.

2. While assailing impugned orders passed by both the courts below, it has been ebulliently argued by learned counsel for petitioner that both the orders are absolutely illegal and is a result of

mis-appreciation of evidence brought on record by the prosecution. In fact, from the evidence available on file, a *prima facie* case is made out against respondents No. 2 and 3. There are specific allegations against respondents No.2 and 3 in the FIR as well as in the statement of petitioner, who appeared in the witness-box as PW-1 before the trial court. Application has been dismissed by the Id. Trial court in a mechanical manner without appreciating the evidence. Similarly, revisional court has also not assigned any reason while dismissing the revision petition preferred by the petitioner challenging the order passed by the Id. Judicial Magistrate First Class, Dasuya. Moreover, the basic requirement of Section 319 of the Code is that it should appear to the court from the evidence collected during trial that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried with the accused already arraigned. In the present case, sufficient evidence has come on record against respondents No. 2 and 3. There is specific attribution to Balbir Singh-respondent No.2 that he caused blunt injuries to complainant-petitioner-Dalwinder Kaur when she fell down on the ground, Paramjit Kaur-respondent No.3 stated that she will not be given anything and inflicted a number of fist blows to her. Further Lakhvir Kaur and Gurmit Kaur, PWs got her released from their clutches.

3. Undoubtedly, respondents No. 2 and 3 have been found innocent during investigation of this case but neither their presence could be established nor that they inflicted any injury to the petitioner.

4. A glance at the provision contained in Section 319 of the

Code discloses that Court has the power to summon any person as an additional accused, if his/her involvement is found in the incident. But at the same time, it is required to be exercised sparingly being a discretionary and extra-ordinary one, that too, in those cases where circumstances of the case so warrant. In case, "**Hardeep Singh vs. State of Punjab and others**"; **2014 (3) SCC 92**; power envisaged under Section 319 Cr.P.C. was discussed at length and it was observed that though only a prima facie case is established by the prosecution by way of evidence led before the court and the same is not required to be tested on the anvil of cross-examination. Yet, it has also been observed that it requires much stronger evidence than mere probability of the complicity of a person to be summoned as an additional accused. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge but short of satisfaction to an extent that the evidence, if left un-rebutted would lead to conviction.

5. Adverting to the facts of the case in hand, Dalwinder Kaur-petitioner has simply deposed that Balbir Singh started giving blunt injuries to her whereas Paramjit Kaur had stated that she would not be given anything and dealt many fist blows to her but to the utter surprise, there is no medical evidence in this regard. In the given circumstances, false implication of the petitioner at the time of registration of FIR cannot be ruled out. It appears that due to the said reason, they were found innocent during investigation of this case. *Prima facie* their participas criminis is not established.

6. Thus, in such circumstances, this Court does not find any

merit in the instant petition. As such, impugned orders dated April 21, 2015 and March 22, 2014 passed by both the courts below, do not call for any interference by this Court. Accordingly, instant petition being devoid of any merit is dismissed.

(JASPAL SINGH)
JUDGE

May 06, 2015
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