

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

CRM-M-17519-2015

Date of Decision: August 28, 2015.

Kapil Dev and another

.....PETITIONERS

VERSUS

State of Punjab and another

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE M.M.S.BEDI

Present: Mr.Ishan Gupta,Advocate
for the petitioners

Mr.Jashan Preet Singh, AAG,Punjab

M.M.S.BEDI, J.(Oral)

Petitioners along with few others have been summoned by the Sessions Court after commitment of the case as additional accused in exercise of powers under Section 193 CrPC in view of the observations of the Supreme Court in Dharam Pal and others vs. State of Haryana and another, 2013 (3)R.C.R.(Criminal) 787.

The case was registered on the statement of complainant Rishavdev alleging that he had been assaulted by members of an unlawful assembly armed with blunt weapons Iron Rods and Sticks etc. A perusal of the impugned order indicates that trial Court has taken into consideration the statements recorded under Section 161 CrPC during the course of investigation on the basis of statements of Jagjit Sharma son Rishavdev,

Mohinder Kaur wife of Rishvdev. The petitioners have been summoned by the trial Court though their names were mentioned in column No.2 of the report of prosecution agency filed under Section 173(2) CrPC as they were found innocent during investigation.

I have gone through the impugned order.

The petitioners have been summoned on the basis of statements under Section 161 CrPC in contravention to the provisions of Section 162 CrPC. No doubt the judgment of Dharam Pal's case (supra) empowers the Court after the statement of witnesses and before the statement of summoning additional accused on the basis of material forming part of the report under Section 173(2) CrPC but it is not always mandatory for a Court to allow an application under Section 193 CrPC without application merely on the statements under Section 161 CrPC, additional accused are to be summoned. In said eventuality the provision of Section 319 would become redundant. The summoning of additional accused in exercise of powers under Section 193 CrPC should be exceptional and generally these powers should be exercised only when there is apparent involvement of an accused but he has been excluded to be away from trial by keeping his name in column No.2. Prima facie some extraneous consideration must be apparent.

The dismissal of an application under Section 193 CrPC would never curtail the right of the Court to exercise the same power under Section 319 CrPC after some evidence is produced by the prosecution and the parameter for summoning the additional accused as laid down in certain judgments including Hardeep Singh's case which fulfills when Court can

exercise powers to summon additional accused prior to the stage of summoning under Section 193 CrPC without judicious application of mind in a right manner in the said circumstance the exercise of inherent powers under Section 482 CrPC would be warranted to avoid the miscarriage of justice and to check the abuse of powers of law.

There appears to be overwhelming evidence forming foundation of the report of the police declaring the petitioners as innocent. Their names have been kept in column No.2 on the basis of some material. As such it is apparently the case where Court should have waited for the material witnesses to be produced in the Court and to be examined on oath.

The petitioners having been summoned on the basis of inadmissible evidence the impugned order datd 06.04.2015 deserves to be quashed qua petitioners. The said order is quashed qua the petitioners without prejudice to the right of the prosecution agency under Section 319 CrPC.

August 28, 2015.
TSG

(M.M.S.BEDI)
JUDGE