

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

Crl. Misc. No.M- 23853 of 2014(O&M)

Date of Decision: February 23, 2015.

Pawan Kumar

..... PETITIONER (s)

Versus

State of Haryana and another

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Jasjit Singh Bedi, Senior Advocate with
Mr. Simar Barnala, Advocate
for the petitioner.

Mr. P.S.Sullar, Addl.A.G., Haryana.

Mr. Parmod Parmar, Advocate
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Petitioner seeks quashing of order dated 05.04.2013 passed by the learned Additional Chief Judicial Magistrate, Jhajjar as well as order dated 12.06.2014 passed by the learned Additional Sessions Judge, Jhajjar upholding the summoning of the petitioner on an application under Section 319 Cr.PC. moved by the prosecution.

Petitioner, who is an accused in FIR No.489 dated 10.09.2009, under Sections 195A/506/451 IPC, registered at police station Jhajjar was found

to be innocent during investigation. He was placed in Column No.2 and report under Section 173 Cr.P.C. (Annexure P2) presented against Bhim Singh and Devi Ram. Charge was framed against the abovementioned accused on 15.07.2011. However, charge for offence under Section 195A IPC was not framed. An application under Section 319 Cr.P.C. was moved by the prosecution for summoning the petitioner as an additional accused after the deposition of Devinder Singh, complainant. Petitioner has been summoned as an additional accused to face trial alongwith other accused vide impugned order dated 05.04.2013 (Annexure P5).

Revision petition preferred by the petitioner against the said order has been dismissed by the learned Additional Sessions Judge, Jhajjar vide impugned dated 12.06.2014.

Hence aggrieved, petitioner has approached this Court for quashing of the abovesaid impugned orders dated 05.04.2013 and 12.06.2014.

Learned senior counsel for the petitioner submits that the impugned orders are patently illegal and there is nothing on record which justifies the summoning of petitioner as an additional accused. He was found to be innocent during investigation conducted by the police. Therefore, rightly not sent up for trial. It is further urged that petitioner is being falsely implicated because he is a government employee i.e., a constable with the Haryana Police. Furthermore, it is submitted that FIR itself is false and fabricated. Statement of Devinder Singh, complainant is purported to be made on 30.08.2009 but it was marked for necessary action and report to the ASI on 29.08.2009. This in itself shows that the entire case is fabricated.

It is vehemently urged that there was no occasion for the petitioner and the co-accused to have threatened Dariyo Singh son of Tek Chand as is alleged. As per allegations in the FIR, Bhim Singh, co-accused of the petitioner forcibly entered the house of Dariyo Singh on 29.09.2008 at about 10.30 p.m. While holding him from the neck and slapping him, Bhim Singh threatened to kill him and his family if they did not take back case FIR No.229/2008. Complaint was lodged. Proceedings under Section 107/151 Cr.P.C. were undertaken. Petitioner alongwith other co-accused illegally entered their Gher (residential area) on 30.08.2009 at about 7.30 a.m. and threatened that in case his son Manjit Singh and daughter Kusum depose against them, they shall abduct the girl and kill the boy. FIR No.229 was registered on 20.05.2008 on the statement of Kusum daughter of complainant, Devinder Singh under Sections 148/149/323/324/376/ 452/506 IPC against Hans Raj, Ajit Singh, Rajbir son of Devi Ram, Rakesh, Ranbir, Mukesh, Devi Ram son of Dhanna (brother of co-accused Bhim Singh in this case and uncle of petitioner-Pawan and Ramesh). Prosecutrix Kusum and her brother Manjit who are witnesses in FIR No.229 dated 20.05.2008 had been examined-in-chief on 25.05.2009. Matter was adjourned for their cross-examination to 09.07.2009. Application under Section 319 was moved in FIR No.229 dated 20.05.2008 for summoning some additional accused, which ultimately got dismissed on 19.08.2010. Cross examination of Kusum was conducted on 31.01.2011 and that of her brother Manjit was conducted on 15.07.2010. It is on this premise, it is alleged that the allegations in the FIR itself are without any basis, they are motivated and false.

It is also contended that there are strained relations between the

parties. On an earlier occasion, the petitioner's uncle Devi Ram had also filed a civil suit against Devinder Singh, complainant, which was decided against him. On this count, the complainant was nursing a grudge.

Petitioner had been found innocent by the police during investigation. His plea of alibi was found to be correct. He had submitted a certificate from the Sr. Superintendent of Police (Crime Branch), Gurgaon to the effect that he was on duty at the relevant time from 6.00 a.m. to 7.00 p.m. Therefore, in this situation the standard of proof required for summoning a person as an additional accused is not made out.

Learned counsel for respondents have opposed this petition while submitting that there is sufficient evidence on record to reveal a *prima facie* case of commission of the offence as alleged by the petitioner. Impugned orders have rightly been passed. Therefore, they deserve to be upheld.

I have heard learned counsel for the parties and gone through the file.

As per the allegations in the FIR, the petitioner alongwith co-accused Bhim Singh and Devi Ram sons of Dhanna, his father and uncle respectively, had forcibly entered the residence of the complainant's elder brother Dariyo Singh on 27.09.2008 at about 10.30 p.m. at night. They caught hold of him by his neck, slapped him and threatened that in case he did not withdraw FIR No.229 dated 20.05.2008, they would kill his entire family. Proceedings under Section 107/151 Cr.P.C. were initiated. On 30.08.2009 at 7.30 a.m., present petitioner alongwith accused Bhim Singh and Devi Ram entered their *Gher* (residential area) and threatened that in case the complainant's daughter Kusum and son Manjit Singh deposed in court against them, the girl will be

abducted and the boy will not be allowed to reach home.

It is a matter of record that FIR No.229 dated 20.05.2008 was registered on the basis of the statement of prosecutrix i.e., the complainant's daughter. She alongwith her brother Manjit Singh deposed on 25.05.2009. An application under Section 319 Cr.P.C. was admittedly moved on 05.08.2009. Thereafter, their cross-examination was deferred to 09.07.2009. It is also a matter of record that cross-examination of the prosecutrix as well as her brother was conducted on 31.01.2011 and 15.07.2010, respectively. It is informed that the accused in that case were convicted. Therefore, to say that once examination-in-chief was over on 25.05.2009, there was no occasion for threatening the said persons is not tenable. It has been held by the Hon'ble Supreme Court in **Hardeep Singh and others v. State of Punjab and others, 2014(1)RCR(Criminal)623** that it is not that the court has to be convinced that the evidence on record, if unrebutted should be such which would lead to the conviction of the persons sought to be summoned. Any material received by the court after taking cognizance can be looked into for this purpose. Test of prima facie case is the same as at the time of taking cognizance, though the degree of satisfaction is higher.

In the present case, it has been the consistent stand of the complainant right from the very beginning alleging the involvement of the petitioner in commission of the offence. He has not wavered from his stand. The plea of alibi on the basis of which the petitioner has been placed in column No.2 cannot be a basis for setting aside the impugned orders. The revisional court has observed in this respect as under:-

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..... Moreover, case diary does not reflect the statement of any witness or village person exonerating the present revisionist Pawan Kumar. A simple certificate of attendance given by the AIGP without any supporting document like DD entries pertaining to arrival and departure, cannot be relied upon at this stage without verifying its truthfulness.”

The plea of the petitioner that he has been falsely implicated only because he is posted as a Constable in the Haryana Police by itself cannot be accepted to exonerate him at this stage, keeping in view the facts and circumstances of the case.

Learned senior counsel is unable to point out any illegality, irregularity or infirmity in the impugned orders. Petitioner has been rightly summoned to face trial in exercise of powers under Section 319 Cr.P.C.

Learned Additional Sessions Judge, Jhajjar while dismissing the petitioner's revision petition has already directed the learned trial court to be liberal in granting personal exemption to the petitioner during trial and to insist for his appearance only at the time of framing of charge and recording his statement under Section 313 Cr.P.C. subject to the condition that his counsel will appear regularly and he will not dispute the identity of the petitioner – Pawan. Bail was also directed to be granted to the petitioner.

Keeping in view the facts and circumstances of the case, this petition is dismissed.

February 23, 2015.
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(LISA GILL)
JUDGE