

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-5849 of 2015

Date of Decision: November 26, 2015

Satnam Singh and others

...Petitioners

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gurbachan Singh Bhatia, Advocate
for the petitioners.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.S.S.Gill, Advocate
for respondent No.2

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. for quashing of the order dated 28.01.2015 passed by learned Addl. Sessions Judge, Patiala, vide which the revision filed by the petitioners against the summoning order dated 11.08.2014 passed by learned JMJC, Patiala, has been dismissed.

Notice of motion was issued and learned State counsel as well as learned counsel for the respondent No.2 appeared, filed reply and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that learned JMIC, Patiala, vide order dated 11.08.2014, summoned the petitioners to face trial under Section 302 IPC etc. The petitioners filed revision petition before learned Addl. Sessions Judge, Patiala, which was also dismissed vide order dated 28.01.2015 by upholding the summoning order. It is stated in the revision petition that case FIR No.477 dated 27.10.2013 under Section 302 IPC was registered on the statement of Paramjit Singh against Janamdeep Singh and the petitioners. During the investigation conducted by the police and after collecting oral and documentary evidence produced by the complainant party, report under Section 173 Cr.P.C. was prepared on 18.12.2013 and challan against Janamdeep Singh only was presented in the Court as the complainant party failed to produce any evidence against present petitioners, though, they were named in the FIR and as such, challan was not presented against them. The copy of the report under Section 173 Cr.P.C. is Annexure P-1. Learned JMIC, Patiala, after supplying the copies, committed the case to learned Sessions Court for 31.01.2014 vide commitment order dated 17.01.2014 (Annexure P-3). Learned Addl. Sessions Judge, Patiala framed the charge against Janamdeep Singh @ Mohandeep Singh under Section 302 IPC vide order dated 29.03.2014 (Annexure P-5). After framing of the charge, some of the evidence was also recorded. When the trial was in progress before learned Addl. Sessions Judge, Patiala, the petitioners received summons from the Court of JMIC, Patiala for facing trial under Sections 302, 34 and 120-B IPC. The copy of the complaint is

Annexure P-6 and copy of summoning order is Annexure P-7.

At the time of arguments, learned counsel for the petitioners argued that on the similar facts, on which the FIR was registered, complaint was filed by the complainant before JMIC, Patiala. When the Sessions Court, after the commitment, has already taken the cognizance and framed the charge on 29.03.2014, then afterwards, JMIC, Patiala summoned the present petitioners. Learned counsel for the petitioners argued that learned JMIC has no power to summon the petitioners on the similar facts in the complaint case when the trial is going on. He further argued that the remedy before the complainant is to file application under Section 319 Cr.P.C. for summoning present petitioners before the trial Court in the State case.

Learned counsel for the petitioner relied upon the law laid down by the Hon'ble Supreme Court in ***Jile Singh vs. State of U.P. and another, 2012(1) RCR (Criminal) 583***, wherein it is held that a person named in FIR in murder case but charge-sheet not filed by police, such a person cannot be summoned as accused on private complaint filed by aggrieved person under Section 200 Cr.P.C. The person could be summoned by following the procedure under Section 319 Cr.P.C. It is further held that it was not open to the Chief Judicial Magistrate to exercise the power under Section 204(1) (b) of the Code and issue summons to the accused w hen the charge-sheet is submitted after the police investigation and case was committed to the Sessions Court. It is further held in the above-cited judgment that once Sessions Court takes cognizance of the offence pursuant to the

committal order, the only other stage when the court is empowered to add any other person to the array of the accused is after receiving some evidence when powers under Section 319 Cr.P.C. can be invoked.

I have gone through the above-cited judgment and the same fully applies in the present case.

In the present case, learned Addl. Sessions Judge, Patiala has already framed the charge on 29.03.2014 and the case was fixed for prosecution evidence. Therefore, after framing of the charge by Sessions Court, the only stage to add additional accused is by invoking provisions of Section 319 Cr.P.C.

In view of the above discussion, I find that the order dated 11.08.2014 passed by learned JMIC, Patiala, summoning the present petitioners is illegal. The impugned order dated 28.01.2015 passed by learned Addl. Sessions Judge, Patiala, dismissing the revision petition filed by the petitioners, is also illegal and not as per law.

Therefore, finding merit in the present petition, the same is allowed. The order dated 11.08.2014 passed by learned JMIC, Patiala and order dated 28.01.2015 passed by learned Addl. Sessions Judge, Patiala are set aside. However, the complainant/aggrieved person is at liberty to file application, if so advised, under Section 319 Cr.P.C. before the trial Court.

November 26, 2015
Vgulati

(INDERJIT SINGH)
JUDGE