

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

CRM-M-8028-2014 (O&M)

Date of decision: 23.3.2015

Jeet Kaur and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Ms.Naiya Gill, Advocate for the petitioners

Ms.Simsi Dhir Malhotra, DAG, Punjab

Mr.PS Salar, Advocate for respondent No.2.

SNEH PRASHAR, J.

1. The present petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed for setting aside order dated 1.6.2013 (Annexure P-3), passed by the learned Judicial Magistrate, 1st Class, Nabha, whereby the petitioners have been summoned under Section 319 Cr. P.C. to face trial as additional accused in case FIR No.79 dated 15.7.2008, under Sections 323, 324, 342, 341, 506, 379, 201, 148/ 149 of the Indian Penal Code registered at Police Station Sadar Nabha. The judgment dated 9.1.2014, passed by the learned Additional Sessions Judge, (Fast Track Court), Patiala dismissing the revision petition, filed against the said summoning order dated 1.6.2013 had also been assailed.

2. The brief facts of the case are that on 15.7.2008 at about 6.00 AM, complainant Darshan Singh was way laid by Paras Dass and his sons, was dragged inside their house and was beaten with dangs and Barchas by them and their co-accused. Ram Kishan Dass and Jaswant Dass, who came to his rescue were also caused injuries. Jeet Kaur and Rani were standing on a side instigating the assailants to inflict injuries on them and had thrown bricks at them. On the complaint of Darshan Singh, FIR No.79 dated 15.7.2008 under Sections 323, 324, 341, 342, 379, 506, 201, 148, 149 of the IPC was registered at Police Station Kotwali Nabha against the petitioners and other assailants. After investigation, the petitioners were found innocent and their names were put in column No.2 while filing the final report/ challan. Against other co-accused, the charge sheet was filed in the Court.

3. During trial the prosecution filed an application under Section 319 of the Code, which was allowed by the learned trial Court vide order dated 1.6.2013 and the petitioners were summoned to face the trial alongwith the other accused.

Feeling aggrieved, the petitioners filed a revision petition, which was also dismissed by the learned Additional Sessions Judge (Fast Track Court), Patiala vide judgment dated 9.1.2014. Subsequent to the same, the present petition under Section 482 Cr.P.C. was filed for setting aside the impugned orders.

4. Submissions made by Ms.Naiya Gill, Advocate for the

petitioners, Ms.Simsi Dhir Malhotra, Deputy Advocate General, Punjab and Mr.PS Slar, Counsel representing respondent No.2 have been heard.

5. Learned counsel for the petitioners argued that the matter was thoroughly investigated by the police, on which the petitioners were found to be innocent and their names were mentioned in column no.2 of the final report filed under Section 173 of the Code. Vide order dated 27.1.2009, the charges against other co-accused were framed by the learned trial Court. As per the FIR, the only role attributed to the petitioners was that they allegedly instigated the other accused, who inflicted injuries on the complainant and other injured. No specific role or any overt act was assigned to the petitioners. They were not present at the place of occurrence and the complainant in order to get implicated all the family members had wrongly incorporated their names in the First Information Report.

6. On the other hand, learned counsel for respondent No.2-complainant submitted that the police in connivance with the accused, had exonerated the petitioners. The complainant had specifically named the petitioners in the FIR as well as while making statement before the learned trial Court.

7. Section 319 Cr.P.C. reads as under:-

"Power to proceed against other persons appearing to be guilty of offence:- (1) Where, in the course of any inquiry into, or trial of an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person

could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard.

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

Thus, the above provision empowers the Court to summon any person to face trial as an additional accused if there is sufficient material / evidence available to show that the said person had committed an offence.

It has been held by the Apex Court in case **Suman Vs. State of Rajasthan and another, (2010) 1 Supreme Court Cases 250** as under:-

"A reading of the plain language of Section 319(1) CrPC makes it clear that a person not already an accused in a case

can be proceeded against if in the course of any inquiry into or trial of an offence it appears from the evidence that such person has also committed any offence and deserves to be tried with other accused. There is nothing in the language of Section 319(1) CrPC from which it can be inferred that a person who is named in the FIR or complaint but against whom charge sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence the court finds that such person has committed any offence for which he could be tried together with the other accused.

The process issued against the appellant under Section 319 CrPC cannot be quashed only on the ground that even though she was named in the complaint, the police did not file charge-sheet against her. A person who is named in the FIR or complaint with the allegation that he/she has committed any particular crime or offence, but against whom the police does not launch prosecution or files charge-sheet or drops the case, can be proceeded against under Section 319 CrPC if from the evidence collected/produced in the course of any inquiry into or trial of an offence, the court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused."

8. Reverting to the instant case, the occurrence took place on 15.7.2008 at 6.30 AM. The incident was reported to the police at 1.05 PM on the same day by one Darshan Singh, on the basis of which, the present FIR was registered. The complainant specifically named the petitioners in his statement and the role attributed to the petitioners was that they were instigating the other accused for beating him and other

injured so that their mother (Bibi) could become the Sarpanch. Ram Kishan and Sat Pal Dass, eye witnesses of the occurrence appeared as PW2 and PW3 and corroborated the version of complainant Darshan Singh. There was no delay in reporting the matter to the police.

Once complicity of the petitioners is disclosed in the FIR and is also affirmed by the testimony of PW1 Darshan Singh complainant, PW2 Ram Kishan Dass and PW3 Sat Pal Dass, it cannot be said that the testimony on oath of the said witnesses, if left unrebutted would not reasonably lead to conviction.

9. Thus, finding no illegality or perversity in the impugned orders, no intervention is called for and the instant petition being devoid of any merit is dismissed.

23.3.2015
gsV

(SNEH PRASHAR)
JUDGE

Note: Whether to be referred to the Reporter?

Yes/No