

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CRR-2061-2013 (O&M)

Date of Decision: February 26, 2015

Parmod Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Pankaj Jain, Advocate,
for the petitioner.

Mr. Gurdas Singh, AAG, Haryana,
for respondent No. 1.

Mr. Jagmohan Ghumman, Advocate,
for respondent Nos. 2 to 13.

NARESH KUMAR SANGHI, J (Oral)

Challenge in this criminal revision petition is to the order dated 3.6.2013, passed by learned Additional Sessions Judge, Gurgaon, whereby an application under Section 319, Cr.P.C., filed by the prosecution for summoning of respondent Nos. 2 to 13, namely, Jaidev son of Surender; Naresh son of Virender; Anil son of Hukam Chand; Ramesh son of Hukam Chand; Surmila wife of Devender; Sarla wife of Hukam Chand;

Beerwati wife of Virender; Samoti wife of Surender; Sarita wife of Moolchand; Pinki wife of Ramesh; Neelam wife of Dayanand; and Dharne Mistri, as additional accused, was dismissed.

Learned counsel for the petitioner submits that respondent Nos. 2 to 13 alongwith their co-accused, who are facing trial, were attributed specific role while reporting the matter to the police and the injuries assigned to them (respondent Nos. 2 to 13) were coinciding with the medico-legal reports of the injured, namely, Bhram Parkash, Ramanand, Kela Devi, Parmod, Dayawati and Neelam. He further submits that during his deposition, PW-1 Parmod Kumar (petitioner) reiterated his initial version and specifically deposed regarding the role of each of the private respondent. He further submitted that the relevant facts have been discussed in para No. 10 of the impugned order where learned Trial Court has failed to discuss the injuries inflicted by the private respondents on the injured persons, mentioned here-in-above. He further submits that *prima facie* sufficient material has emerged on record to connect the private respondents with the alleged offences and they should have been ordered to be summoned. In support of his contentions, learned counsel has placed reliance on the judgments delivered in the cases of **Hardeep Singh v. State of**

Punjab and others, 2014 (1) R.C.R. (Criminal) 623 and Babubhai Bhimabhai Bokhiria and another v. State of Gujarat and others, 2014 (2) R.C.R. (Criminal) 915.

Learned counsel for the State submits that though during investigation the private respondents were found to be innocent, but there is sufficient material to proceed against them and, as such, the private respondents could have been summoned to face the trial.

Learned counsel for respondent Nos. 2 to 13 submits that after thorough investigation, the investigating agency came to the conclusion that Ramesh son of Hukam Chand was not present in the village where the alleged occurrence had taken place and that the other persons proposed to be summoned had not participated in the occurrence and, as such, learned Trial Court has rightly rejected the prayer for their summoning as additional accused. He further submits that it is illogical that 18 persons armed with various types of weapons would cause injuries and the injured would sustain only 20-23 injuries. He has further pointed out that out of twelve persons sought to be summoned as additional accused, seven are women. In support of his contentions, he has also placed reliance on the same judgments cited by learned counsel for the petitioner.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

So far as the judgments relied upon by learned counsel for the private parties are concerned, perusal of the same would reveal that at the stage of summoning of additional accused, the Court has to keep in mind that the material available on record should be little more than the *prima facie* evidence and might not be up to the standard required at the time of holding a person guilty.

So far as the facts of the present case are concerned, at the time of lodging of the FIR, the informant, Parmod Kumar, specifically deposed that the respondent, Jaidev had caught hold Bhram Parkash and thereafter Naresh and Anil hit him (Bhram Parkash) with their respective sticks on left ear and left eye, respectively. Ramesh had hit on the left shoulder of Ramanand; Surmila caused one injury by means of *Pharsi* on the head of Kela Devi and another injury on the left finger of Parmod Kumar; Virender and Devender gave a *Pharsi* blow on the head of Parmod Kumar; Samoti and Pinky caused stick blows on the person of Dayawati; and that Sarita wife of Mool Chand and Neelam wife of Dayanand gave a stick blow on Neelam (aunt of

the petitioner Parmod Kumar).

During his deposition as PW-1, Parmod Kumar specifically deposed about the individual role assigned to respondent Nos. 2 to 13. With the help of learned counsel for the parties, the MLRs enclosed with the paper book were perused and the injuries attributed to each one of them (private respondent Nos. 2 to 13) were coinciding with the injuries mentioned in the FIR.

During course of arguments it was also submitted by learned counsel for the private respondents that it is a case of version and cross-version. However, on a specific question asked by this Court, learned counsel for the private respondents very fairly admitted that respondent No. 6, Surmila, had also sustained injuries in the same occurrence, which would clearly spell out that she was present at the spot.

It was also pointed out by learned counsel for the petitioner that a petition was presented by the petitioner before this Court for issuance of a direction to the investigating agency for fair investigation and in the meantime the investigating agency had filed the charge-sheet (report under Section 173, Cr.P.C.) before learned Area Judicial Magistrate and, as such, the said petition was disposed of.

The relevant discussion by the learned Trial Court in the impugned order reads as under:

“9. In the case in hand, from the evidence of complainant examined as PW1, though it is evident that he has named all the persons sought to be summoned as an accused as assailants. However, police after threadbare investigation of the matter has found them innocent. In fact, accused Naresh and Anil were found to be not present at the time of occurrence and the injuries are stated to have been inflicted by Mool Chand and Virender, the accused who are already facing trial. It is also detailed in the challan report that remaining accused other than Naresh and Anil, Jaidev, Ramesh, Surmila, Sarla, Beerwati, Samoti, Sarita, Pinki, Neelam and Dharme Mistri are not wanted in the case. Therefore, police has not challaned them to face trial along with the co-accused.

10. In this backdrop, evidence of Parmod (PW1), is not sufficient enough to establish complicity of the accused. Though he has attributed specific injury to these proposed accused. He has named about eighteen-nineteen persons out of which five have been challaned by the police to face trial. The injuries which are attributed to the proposed accused are in fact, verified by the police to be attributed to the accused who are facing trial. Therefore, at this stage, wherein the matter has already been investigated by the police threadbare and statement of all the people who

mattered and were relevant to the issue were recorded, the allegations of the complainant that police has intentionally left some of the accused could not inspire much confidence. The conclusion drawn by the police are found to be based upon sound reasons.

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16. *In this backdrop, it does not appear from the evidence of Parmod (PW1) and from the above narrated facts, persons proposed to be summoned as an accused namely Jaidev, Naresh, Anil, Ramesh, Surmila, Sarla, Beerwati, Samoti, Sarita, Pinki, Neelam and Dharme Mistri were involved in the crime for which they could have been tried together with the five accused who are facing trial in this case.”*

The submission of learned counsel for respondent Nos. 2 to 13 that out of twelve respondents sought to be summoned, seven are women, is by itself is not sufficient not to summon them as additional accused, if otherwise the case is made out for summoning.

The argument that respondent No. 5, Ramesh, was not present in the village at the time of occurrence, has to be decided during trial. The other arguments raised by learned counsel for the private respondents are also not tenable.

From the perusal of the material available on record, this Court holds that there is more than *prima facie* evidence to

connect respondent Nos. 2 to 13 with the offences for which they are sought to be summoned and, as such, the present criminal revision petition is allowed. The impugned order dated 3.6.2013, passed by learned Additional Sessions Judge, Gurgaon, is set aside and respondent Nos. 2 to 3 are directed to be summoned to face trial with the accused already facing trial.

(NARESH KUMAR SANGHI)
JUDGE

February 26, 2015
Pkapoor