

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

CRM-M-9271 of 2015
Date of Decision: 23.03.2015

Ninder Singh and anotherPetitioners
Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. S.S. Brar, Advocate
for the petitioners.

SNEH PRASHAR, J.

1. The present petition has been filed by the petitioners for setting aside order dated 24.02.2015, whereby on an application under Section 319 Cr.P.C moved by the prosecution, they have been summoned to face trial as additional accused.

2. Precisely the relevant facts garnered from the documents produced by the petitioners are as under:

On an application given by Jasvir Singh s/o Hakam Singh resident of Village Phoola FIR No.126 dated 22.10.2009, under Sections 325, 324, 323 read with Section 34 of the Indian Penal Code was registered at Police Station Nathana. It was a case of cross version. Jasvir Singh stated that when he alongwith his father Hakam Singh , uncle Harbachan Singh and mother Balbir Kaur were standing near the house of Harwinder Singh; Baljit singh, Hardev Singh, Ninder Singh, and Gurcharan Singh armed with sharpened edged weapons and sticks etc came and inflicted injuries on him, his uncle Harcharan Singh and father Hakam Singh. Balbir Kaur suffered injuries on her head and her chest when she tried to save her husband-

Hakam Singh.

Ninder Singh and Gurcharan Singh were not arrested/challaned by the prosecution and their names were cited in column No.2 of the final report filed by the prosecution as envisaged under Section 173 Cr.P.C. During trial, complainant-Jasvir Singh filed an application invoking the provisions of Section 319 of the Code for summoning the petitioners (Ninder Singh and Gurcharan Singh) as additional accused for facing trial alongwith the other accused. The application was dismissed by learned trial Court vide order dated 27.08.2014.

Aggrieved by the order complainant-Jasvir Singh preferred the revision petition which was allowed by learned Additional Sessions Judge, Bathinda vide the impugned order dated 24.02.2015.

Assailing the said order the present petition has been filed by Ninder Singh and Gurcharan Singh.

3. Learned counsel for the petitioners argued that there was no material on the file to prove presence of the petitioners at the time of occurrence. They were not named as witnesses in the cross case registered against complainant-Jasvir Singh and others. They were also not medically examined as they had not suffered any injuries, whereas the persons who were present in the rival group had suffered injuries and were medically examined. Also, there being no evidence collected by the police after the petitioners were found to be innocent during investigation, there was no reason to summon them as additional accused.

4. Having considered the submissions of learned counsel for the petitioners I find no force in the same. The statement of complainant-Jasvir Singh formed the basis for registration of the First Information Report. It

was noticed by learned Additional Sessions Judge in his order that the complainant in his statement, attributing specific injuries to the petitioners had stated that Ninder Singh had given Kirpan blow on left arm and right finger of Harbachan Singh and when Hakam Singh came forward to save him, Gurcharan Singh gave a stick blow on forehead of Hakam Singh. Further that the injuries attributed to the petitioners were corroborated by medical evidence. It was also noticed that during the course of trial sufficient evidence was led by the prosecution justifying their plea to summon the petitioners as additional accused. The power under Section 319 Cr.P.C. is limited but at the same time it has to be exercised judicially when prima-facie sufficient evidence surfaces in the course of an enquiry or a trial disclosing the complicity of persons sought to be summoned.

Admittedly, the names of the petitioners had appeared in the First Information Report and specific role was attributed to them. The evidence adduced by the prosecution during trial also prima facie proved their participation in the occurrence. Resultantly, the plea of the prosecution to summon them for being tried alongwith the accused already facing trial, was justified.

Thus, finding no merit in the petition, it is hereby dismissed.

March 23, 2015
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(SNEH PRASHAR)
JUDGE