

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.3298 of 2013 (O&M)

.....

Date of decision:14.1.2015

Pappu alias Jagdish

...Petitioner

v.

Bansi and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Paramjit Singh Jammu, Advocate for the petitioner.

Mr. J.S. Gill, Advocate for respondents No.1 to 11.

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Inderjit Singh, J.

The petitioner has filed this criminal revision petition under Section 401 Cr.P.C. challenging the impugned order dated 23.8.2013 passed by learned Additional Sessions Judge, Sirsa dismissing the application filed under Section 319 Cr.P.C. for summoning the additional accused.

Notice of motion has been issued in this case.

Mr. J.S. Gill, Advocate has put in appearance on behalf of respondents No.1 to 11 and contested this revision petition.

I have heard learned counsel for the petitioner and learned counsel for respondents No.1 to 11 and have gone through the record.

From the record, I find that the learned Additional Sessions

Judge, Sirsa, vide impugned order dated 23.8.2013 dismissed the application filed by complainant Pappu alias Jagdish under Section 319 Cr.P.C. to summon the co-accused to face trial for the offences under Sections 148, 149, 325, 307 and 323 IPC on the basis of evidence and the statement of PW-1, who has specifically named these persons, but the Police has not intentionally challaned them and has not taken any action against them.

The learned Additional Sessions Judge, Sirsa by holding that a person could not be summoned to face trial, if prima facie case was not made out against him and a person should be summoned only when the Court finds that the evidence on record is such which would reasonably lead to conviction of a person sought to be summoned. The learned Additional Sessions Judge also relied upon the judgment of the Hon'ble Supreme Court in Lal Suraj @ Suraj Singh and another v. State of Jharkhand, 2009 (1) R.C.R. (Cr.) 504. This finding of the learned Additional Sessions Judge, Sirsa, is not as per law as a Constitution Bench of the Hon'ble Supreme Court in Hardeep Singh v. State of Punjab and others, 2014 (1) R.C.R. (Cr.) 623 in para 19 held as under:-

“At the very outset, we may explain that the issue that was being considered by this Court in Dharam Pal (CB), was the exercise of such power at the stage of committal of a case and the court held that even if Section 319 Cr.P.C. could not be invoked at that stage, Section 193 Cr.P.C. could be invoked for the said purpose. We are not delving into the said issue

which had been answered by the five-Judge Bench of this Court. However, we may clarify that the opening words of Section 193 Cr.P.C. categorically recite that the power of the Court of Sessions to take cognizance would commence only after committal of the case by a magistrate. The said provision opens with a non-obstante clause “except as otherwise expressly provided by this code or by any other law for the time being in force”. The Section therefore is clarified by the said opening words which clearly means that if there is any other provision under Cr.P.C., expressly making a provision for exercise of powers by the court to take cognizance, then the same would apply and the provisions of Section 193 Cr.P.C. would not be applicable.”

In view of the law laid down by the Hon'ble Supreme Court, the test applied is that it is more than prima facie case, an exercise at the framing of the charge but short of satisfaction to an extent that the evidence if remained unrebutted would lead to conviction. Therefore, the law relied upon by the learned Additional Sessions Judge, Sirsa has already been overruled by the Hon'ble Supreme Court. Therefore, the impugned order passed by the learned Additional Sessions Judge, Sirsa is not as per law and the same is set aside.

The criminal revision petition is allowed. The case is remanded back. The learned Additional Sessions Judge, Sirsa is directed to decide the application filed under Section 319 Cr.P.C. afresh after

hearing the matter again.

January 14, 2015.

(Inderjit Singh)
Judge

hsp