

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 110

Criminal Revision No.M-1526 of 2015 (O & M)

Date of Decision: May 04, 2015

Mehma Singh

..... PETITIONER

VERSUS

State of Punjab & another

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. Amaninder Singh Sekhon, Advocate, for the petitioner.

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Jaspal Singh, J

1. The instant petition has been directed by the petitioner against order dated February 18, 2015 passed by the Sessions Judge, Sri Muktsar Sahib, whereby an application moved under Section 319 Cr.P.C. for summoning Harjit Singh and Bhupinder Singh @ Bhinda was partly dismissed qua Bhupinder Singh @ Bhinda.

2. While assailing the impugned order, it has been argued with vehemence by learned counsel for the petitioner that learned Trial Court has failed to appreciate that specific role has been attributed to Bhupinder Singh @ Bhinda who joined hands with co-accused while causing injuries to

complainant – Mehma Singh. As many as 12 injuries were sustained by complainant out of which two injuries have been declared to be grievous in nature. No doubt, name of Bhupinder Singh @ Bhinda did not figure in FIR but it does not *ipso facto* mean that role attributed to respondent No.2 – Bhupinder Singh @ Bhinda is false or that he has been dragged in the instant case. Statement of Chhinder Pal Kaur, one of the eye witnesses and sister of complainant was recorded during investigation of this case on May 7, 2014. While getting her statement recorded, she has categorically stated that Bhupinder Singh @ Bhinda armed with wooden dasta caused injuries to her brother and further that he as well as his cronies did not let her to save her brother. While replying upon observations made in case **Hardip Singh vs. State of Punjab & others, 2014(1) RCR (Criminal) 623**, it has been submitted by learned counsel for the petitioner that power conferring under Section 319 Cr.P.C. is extraordinary. Even if a person has not been named in the FIR and his name appears during investigation of the case and complicities established in the occurrence during the course of investigation, he can be summoned to face trial alongwith his co-accused at any stage. Moreover, at the time of summoning a person under Section 319 Cr.P.C., only a *prima facie* case is to be seen that no hovering enquiry is required to be conducted. Since specific role has been attributed to respondent No.2 Bhupinder Singh @ Bhinda that he caused injuries to Mehma Singh with wooden dasta, impugned order whereby his summoning has been declined, is not sustainable in the eyes of law. Infact, entire application moved under Section 319 Cr.P.C. deserves to be accepted qua respondent No.2 also.

3. This Court has given an anxious thought to the submissions made by learned counsel and perused the record available.

4. At the very outset, it would be pertinent to mention that summoning of an accused in a criminal case is a serious matter. Such a question came for hearing before the Hon'ble Apex Court in case **Pepsi Foods Ltd. & another vs. Special Judicial Magistrate & others, (1998) 5 Supreme Court Cases 749** and it was observed that summoning order must show that Magistrate has applied his mind to the facts of the case and law applicable thereto. He is under obligation to carefully scrutinize the evidence brought on record and may himself put questions to the complainant as well as witnesses to find out the truthfulness of allegations. Para No.28 of the above noted judgment is relevant to resolve the controversy involved in this case which reads as under:-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

5. A reading of the aforesaid observations makes it abundantly clear that while passing a summoning order, Magistrate has to carefully scrutinize evidence brought on record and even he can elicit answers to find out the truthfulness of allegations.

6. Reverting back to the facts of the case in hand, undoubtedly, name of Bhupinder Singh @ Bhinda did not figure in statement of petitioner Mehma Singh, got recorded by him with police on April 28, 2014, nor in the FIR. It is not his case that some unknown persons were also accompanying the accused who are facing trial and caused injuries to him. His name figured for the first time in statement of Chhinder Pal Kaur, who is none else but sister of complainant, recorded on May 7, 2014 which can be termed to be an after-thought. Moreover, neither there is any specific attribution to respondent No.2 nor there is any specific corresponding injury. So, in such circumstances, false implication of respondent No.2 by moving application under Section 319 Cr.P.C. cannot be ruled out.

7. In the light of what has been discussed above, this Court does not find any infirmity, illegality or impropriety in the impugned order as far as it relates to respondent No.2. As such, instant petition being devoid of merit, is dismissed.

May 04, 2015
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(Jaspal Singh)
Judge