

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

CRR No. 2500 of 2015

Date of decision:- July 16, 2015

Sarwan Lal

.....Petitioner..

Vs.

State of Punjab and others

....Respondent..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Sachin Sharma, Advocate,
for the petitioner.

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? (✓)

JASPAL SINGH, J.

Challenge in this revision petition is to order dated February 13, 2015 passed by Id. Additional Sessions Judge, Amritsar setting aside order dated July 25, 2013 passed by JMIC, Amritsar whereby he has summoned respondents No. 2 and 3 to face trial on an application filed under Section 319 Cr.P.C. by the prosecution.

2. While assailing impugned order dated February 13, 2015 passed by Id. Additional Sessions Judge, Amritsar, it has been ebulliently argued by learned counsel for petitioner that same is absolutely against the evidence available on file and settled canons of law. A perusal of FIR as well as statement of PW-2 Sarwan Lal clearly depicts that specific allegations have been levelled against respondents No.2 and 3 and it was only due to the said reason and

after considering minutely the allegation levelled, Id. lower court had passed order dated July 25, 2013, summoning them to stand trial along with their co-accused Sher Singh. It has further been urged by learned counsel for petitioner that Id. Additional Sessions Judge, Amritsar while allowing revision petition(s) has applied the principle of law laid down in **“Mical Macado and another v. Central Bureau of Investigation and another”, 2000 (3) SCC 362** whereas latest law laid down by the Constitution Bench in **“Hardeep Singh v. State of Punjab”, 2014 RCR (Crl.) 623** ought to have been considered and applied. On this score alone, impugned order is not sustainable and liable to be set aside. In **Hardeep Singh's** case (supra) Section 319 Cr.P.C. has been elaborately discussed and one of the questions posed in **Hardeep Singh's** case (supra) was whether power under Section 319(1) of the Code can be exercised only if the Court is satisfied that the accused summoned will in all likelihood be convicted and said question was answered to the effect that though under Section 319(4) (b) of the Code the accused subsequently impleaded is to be treated as if he had been an accused when the Court initial took cognizance of the offence, degree of satisfaction that will be required for summoning a person under Section 319 of the Code would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that trial may have already commenced against the original accused and it is course of such trial that materials are disclosed against the newly summoned

accused. Even otherwise, fresh summoning of an accused would result in delay of trial, therefore, degree of satisfaction for summoning of accused (original and subsequent) has to be different. Since, there are specific allegations against respondents No. 2 and 3 that they were present at the spot and it is only in furtherance of their common intention shared with Sher Singh, their co-accused, injury was caused by Sher Singh to petitioner. Thus, there is overwhelming evidence what to talk of any prima facie evidence to summon respondents No. 2 and 3 as additional accused, to stand trial along with Sher Singh under Section 319 Cr.P.C.. Thus, impugned order is liable to be set aside by way of acceptance of instant petition whereas order passed by Id. Magistrate deserves to be restored.

3. After bestowing due consideration to the aforesaid submissions made by learned counsel for petitioner and scrutinizing impugned order (s) as well as other documents available on file, this Court is of the considered view that contention put forth by learned counsel for petitioner, do not carry much legal substance.

4. A glance at the FIR as well as statement of PW-2-complainant that on October 11, 2010 at about 6:00 p.m. his son-in-law Sammi along with his brother Sunny was coming to the house of complainant, who went out of his house on hearing noise. He spotted Sher Singh-accused along with Manpreet Singh and an unknown person quarrelling with his son-in-law Sammi and his brother Sunny. When he tried to rescue them, Sher Singh gave punch blow with some iron article put on his hand, which resulted into infliction of

injury on his left eye, due to which he lost eye-sight. But there is nothing on record to suggest that any injury was sustained by Sammi or his brother Sunny with whom Sher Singh has some dispute with regard to money. Moreover, if at all respondents No. 2 and 3 are deemed to be present at the spot for the sake of arguments, it cannot be inferred that they shared common intention with Sher Singh, especially, in the circumstances that neither they were armed with any weapon nor they caused any injury either to complainant or to his son-in-law as well as his brother. Moreover, there was no dispute or animosity in between respondents No. 2 & 3 and complainant. Moreover, summoning of a person as an accused is a serious matter and a person cannot be summoned simply that a person has made a statement against him/her.

5. Thus, this Court is of the considered view that there is no illegality, infirmity, impropriety or perversity in the impugned order dated February 13, 2015. Rather, same is absolutely inconsonance with the evidence and legal proposition. As such, impugned order dated February 13, 2015 does not call for any interference by this Court. Accordingly, instant petition stands dismissed.

July 16, 2015
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(JASPAL SINGH)
JUDGE