

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

**Criminal Misc. No. M-17755 of 2013 (O&M)
Date of Decision: 15.01.2016**

Sarban Singh & another

...Petitioner(s)

Versus

State of Punjab & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

- 1. Whether reporters of local newspapers may be allowed to see judgment?*
- 2. To be referred to reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present:- Mr. Deepak Gupta, Advocate
for the petitioners.

Mr. Gurinderjit Singh, DAG, Punjab.

Mr. P.K.S. Phoolka, Advocate
for respondent no.2.

HARI PAL VERMA J.

Petitioners have filed the present petition under Section 482 CrPC seeking quashing of order dated 23.4.2013 passed by learned Additional Sessions Judge, Bathinda, whereby revision petition filed by respondent no.2 has been allowed and order dated 7.7.2011 passed by Additional Chief Judicial Magistrate, Bathinda has been set aside while observing that

there is sufficient evidence on record to summon the petitioners as additional accused and directed the trial Court to re-examine Gursewak Singh and to decide the application under Section 319 CrPC thereafter.

The brief facts of the case are that the complainant - Albel Singh is owner of land measuring 43 kanal 1 marla of Puriwala Bus Stand. The land of Gurmander Singh adjoins his land. On the other side, there is land of Sarban Singh and there is also a road on one side. A water course was sanctioned by the authorities in between the land of Gurmander Singh and Sarban Singh. The said water course was being used by them for irrigation. On 10.11.2008, the son of the complainant namely Gursewak Singh told the complainant that Sukhmander Singh son of Sarban Singh was driving the tractor while Gurmander Singh and Sarban Singh were sitting on the cultivator of the tractor and thereby, they demolished the water course. The matter was reported to the panchayat, where a compromise was effected and the accused were directed to restore the water channel, but they failed to do so and rather, they encroached upon the water course. In this manner, the instant FIR No.112 dated 25.11.2008 under Section 447, 430, 431, 427 IPC P.S. Sadar, Bathinda was registered against the accused on the statement of complainant Albel Singh.

After investigation, the police filed the challan and the prosecution kept the petitioners - Sarban Singh and Sukhmander

Singh in column no.2 and both the petitioners were declared innocent. On 21.7.2009, charges were framed against Gurmander Singh under Sections 447/431 IPC. Although the complainant Albel Singh was examined as PW-1 but the prosecution did not examine Gursewak Singh and he was given up, as unnecessary witness, on 9.3.2010. On 13.10.2010, the complainant Albel Singh moved an application under Section 319 CrPC for summoning of the petitioners to face trial along with accused Gurmander Singh. However, learned Additional Chief Judicial Magistrate, vide order dated 7.7.2011, dismissed the said application. Learned Magistrate while dismissing the application observed as under:-

"I have heard the learned Additional Public Prosecutor for the state and have gone through the record. The FIR in the instant case was registered on the basis of statement of Albel Singh. Albel Singh in his statement, which formed the basis of the FIR has stated that on 10.11.2008 his son Gursewak Singh informed him that Gurmander Singh, Sukhmander Singh and Sarban Singh have demolished the water channel with the help of tractor HMT 5911 and he had informed the panchayat and Sarpanch Sukhcharan Singh and Ex. Panch Ajmer Singh had got a compromise effected vide which Gurmander Singh was to get "Pakka Khal" made and Gurmander Singh instead of doing the same had sown wheat crop in the land of the said water channel and included with his land. Thereafter Albel Singh complainant was examined as PW-1, where again he has reiterated the facts

that Gursewak Singh disclosed the facts to him. Gursewak Singh has not been examined by the prosecution rather the Additional Public Prosecutor chose to give up Gursewak Singh as being unnecessary on 09.03.2010. The evidence of Albel Singh alone at this stage hence amounting to hear say, is not sufficient to summon accused Sarban Singh and Sukhmander Singh to face trial alongwith accused Gurmander Singh. In Guriya @ Tabassum Tauquire and ors. Vs. State of Bihar and Anr. 2007 (4) Recent Criminal Reports (Criminal)497, the Hon'ble Apex Court has held that the court cannot add the accused under section 319 to face trial on the basis of material available in the charge sheet or the case diary and person can only be summoned to face trial on the basis of evidence adduced and it is further emphasized that word "evidence" in section 319 contemplates evidence of witnesses given in the court.

Hence, keeping in view that ratio of the above said pronouncement and the fact that at this stage the statement of Albel Singh does not disclose sufficient grounds to summon accused Sarban Singh and Sukhmander to face trial alongwith accused Gurmander Singh. The application is dismissed."

Aggrieved from the aforesaid order dated 7.7.2011, the complainant-Albel Singh filed revision petition before learned Additional Sessions Judge, Bathinda and the revisionary Court while observing that there is sufficient evidence on record to summon Sarban Singh and Sukhmander Singh, as additional

accused, allowed the revision petition and directed the trial Court to re-examine Gursewak Singh and then to decide the application under Section 319 CrPC.

It is in the aforesaid circumstances, Sarban Singh and Sukhmander Singh, petitioners, have preferred the present petition.

I have heard learned counsel for the parties and looked into the impugned orders.

The FIR in question was registered on the basis of the statement of complainant Albel Singh, wherein he has stated that on 10.11.2008, his son Gursewak Singh informed him about demolition of water course by the accused with the help of tractor. Albel Singh was examined as PW-1, where he reiterated the fact that his son namely Gursewak Singh had disclosed the fact regarding demolition of water course. However, the aforesaid Gursewak Singh has not been examined by the prosecution. Rather, he was given up, as a witness, on 9.3.2010, being unnecessary. Thus, the evidence of complainant is only hearsay and is not sufficient to summon Sarban Singh and Sukhmander Singh. Therefore, the revisionary Court while passing the order dated 23.4.2013 has failed to elaborate as to whether the evidence on record is sufficient to summon Sarban Singh and Sukhmander Singh, as additional accused, especially the lone eyewitness Gursewak Singh is yet to be examined. Thus, I find that the impugned order passed by learned revisionary Court is

absolutely non-speaking, as no such evidence is forthcoming which may warrant summoning of Sarban Singh and Sukhmander Singh.

In view of the aforesaid, the present revision petition is allowed and the impugned order dated 23.4.2013 passed by the revisionary Court is hereby set aside.

January 15, 2016
AK

(HARI PAL VERMA)
JUDGE