

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-15851 of 2014
DECIDED ON: JANUARY 13, 2016

AJIT SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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?

Present: Mr. Gaurav Singla, Advocate
for the petitioner.

Mr. J.S. Sekhon, AAG, Punjab.

Mr. L.M. Gulati, Advocate
for respondent No.5.

JASPAL SINGH, J

By virtue of this petition preferred under Section 482 of the Code of Criminal Procedure (for short 'Code') Ajit Singh has sought the quashing of summoning order dated February 23, 2011 (Annexure P-14) passed by learned JMIC, Amritsar vide which he has been summoned to face trial under Sections 307, 324 and 34 IPC in case FIR No. 43 dated 22.04.2005 as well as impugned order dated May 27, 2013 (Annexure P-18) whereby revision petition preferred

by the petitioner has been dismissed and all subsequent proceedings arising therefrom.

2. It has been argued with vehemence by learned counsel for the petitioner that the impugned orders are absolutely against the settled cannons of law. In fact, there is nothing on record to suggest that the petitioner ever participated in the commission of offence. After the registration of FIR father of the complainant had moved an application to Senior Superintendent of Police, Amritsar and other high police officials for fair investigation in the FIR in question and acting on the said application various inquiries were conducted by different higher police officials, during which petitioner has been found to be innocent. Since the complainant as well as his father were not satisfied with the inquiry so conducted, they moved another application to the higher police officials at Chandigarh and then inquiry was marked to Senior Superintendent of Police, Kapurthala, which was further entrusted to Superintendent of Police (Detective), Kapurthala who associated both the parties and recorded the statements of various witnesses; besides, examining rapat roznamcha dated 17.04.2005 of Police Post Sadar Bazar Cantt, where ASI Ajit Singh (petitioner) remained posted as incharge at the time of alleged occurrence. Even during that inquiry petitioner was found innocent. It was also established that he remained present at the place of his posting. Even subsequent thereto, an inquiry was also conducted by Sh. Kaustav Sharma, IPC, Superintendent of Police, City-I, Amritsar who came to the conclusion that petitioner was not present at the time of alleged occurrence in the area of Ekta Nagar on 17.04.2005.

3. However, after the completion of investigation challan was only

presented against Kanwal and Lucky, sons of the petitioner while mentioning the name of the petitioner in column No.2 of the report. During the course of evidence before learned trial Court prosecution moved an application under Section 319 of the Code for summoning the petitioner as an additional accused before Juvenile Justice Board, Amritsar and vide order dated January 12, 2007 Juvenile Justice Board, Amritsar dismissed the said application on the ground that Board has no jurisdiction to entertain the application. The said order was challenged by the complainant before this Court and it was observed that Juvenile Justice Board, Amritsar is competent and has got jurisdiction to summon a person as an additional accused under Section 319 of the Code but his trial is to be separated from the trial of the juvenile. Subsequent thereto, statement of complainant was recorded and the complainant moved an application under Section 319 of the Code on February 02, 2007 for summoning the petitioner as an additional accused, which has been allowed. The said order is illegal and against the factual and legal position, as there is no fresh or additional evidence about the allegations levelled by the complainant against the petitioner. Number of inquiries were conducted by senior police officials in which petitioner was found innocent and at the time of summoning the petitioner as an additional accused, learned trial Court did not take into consideration the afore-said report.

4. Learned trial Court also did not take into consideration that while examining an application under Section 319 of the Code, the Court has also to bear in mind that there is no compelling duty on its part to proceed against the person. Moreover, a person could be summoned as an additional accused under

Section 319 of the Code only when the Court finds that there is evidence on record, which would reasonably led to conviction of a person, sought to be summoned. In the present case, the impugned orders are *prima facie* wrong and are not sustainable in the eyes of law which have been passed by the courts below in a haste manner. The same are based on conjectures and surmises and not in consonance with the settled provisions of law therefore, the same are liable to be reversed.

5. Learned counsel for the petitioner further contends that a compromise was also arrived at in between the parties but the compromise did not materialize as respondent No.5 back out from his statement. Since there is no *prima facie* evidence with regard to the participation of the petitioner in the alleged occurrence, summoning of the petitioner as an additional accused is fully unjustified. Thus, impugned orders are liable to be set aside.

6. This court has given deep thought to the afore-said submissions made by learned counsel for the petitioner but find the same to be without any legal weight. The mere fact that petitioner has been found innocent during inquiry does not *ipso facto* mean that learned trial Court is debarred from proceedings against him under Section 319 of the Code. The instant case has been registered at the instance of Pardeep Singh. He has clearly unfolded that on April 17, 2005 while he was returning to his home when he reached near the house of Sukhdev Singh, ASI Ajit Singh (petitioner) came there and caught hold him by his hairs whereas his sons namely Lucky and Kanwal inflicted injuries with knives on the left of his chest, back, arm, neck as well right side of his back and when his cousin Sukhdev Singh intervened accused escaped from the

spot. Thus there is specific attribution to the petitioner having caught hold of him by his hairs facilitated his sons Kanwal and Lucky to inflict injuries with knife on the various parts of his body, which further finds corroboration from the testimony of Sukhdev Singh one of the eye witnesses. There is also medical evidence in the shape of MLR proved by doctor who medico legally examined the injured Pardeep Singh. Not only this, injury appearing on the person of complainant was also found to be dangerous to life. Since, there is a specific attribution to the petitioner, this Court is of the considered view that he has been rightly summoned as an additional accused to face trial under Section 307 and 302 IPC with the aid of Section 34 IPC.

7. This court does not find any infirmity, illegality of impropriety in the impugned orders passed by the Courts below. As such, the same is dismissed.

JANUARY 13, 2016
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(JASPAL SINGH)
JUDGE