

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-28968 of 2016

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Date of decision:15.12.2016

Dhanjit Singh and others

.....Petitioners

v.

State of Punjab

.....Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. P.S. Ahluwalia, Advocate for the petitioners.

Mr. D.S. Virk, Assistant Advocate General, Punjab
for the respondent-State.

Mr. Mohinder Kumar, Advocate for the complainant.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of order dated 5.10.2015 (Annexure-P.4) passed by learned Chief Judicial Magistrate, S.A.S. Nagar (Mohali) by virtue of which the petitioners have been summoned to face trial in case FIR No.63 dated 25.5.2011 registered at Police Station Phase I, District S.A.S. Nagar (Mohali) for the offences punishable under Sections 323, 324, 506 read with Section 34 IPC as well as the order dated 3.8.2016 (Annexure-P.6) passed by the Court of learned Additional Sessions Judge, S.A.S. Nagar (Mohali), whereby their revision petition has been dismissed in view of the facts and circumstances of the case.

Notice of motion was issued in this case.

Mr. D.S. Virk, learned Assistant Advocate General, Punjab has

put in appearance on behalf of the respondent-State and Mr. Mohinder Kumar, learned Advocate has appeared for the complainant and contested this petition.

I have heard learned counsel for the parties as well as learned Assistant Advocate General, Punjab and have gone through the record.

From the record, I find that the challan had been presented in FIR No.63 dated 25.5.2011 registered for the offences under Sections 323, 324, 506 read with Section 34 IPC at Police Station Phase I, District S.A.S. Nagar (Mohali) against Harvinder Singh and Bimalpreet Singh (since PO). During the trial, an application was filed under Section 319 Cr.P.C. for summoning Harkinderjeet Singh, Babbaljit Singh and Dhanjit Singh as accused. It is alleged in the application that on 24.5.2011 at about 11.40 p.m., the complainant had gone to the house of his friend Nandy and when he reached near his house, over there accused Gaganpreet Singh, Harvinder Singh, Babbaljit Singh, Harkinderjeet Singh and Dhanjit Singh were beating Gagandeep Singh and Sukhwinder Singh and caused serious injuries to them. It is also in the application that in his statement made to the Police, the complainant had categorically mentioned the role of the above said accused persons. However, the police had kept the above said persons in column No.2. It is also in the application that even in the statement recorded on 6.8.2015 before the Court, the complainant reiterated his above statement and the role of the accused.

The learned Chief Judicial Magistrate, Mohali vide order dated 5.10.2015 accepted the application and Harkinderjeet Singh, Babbaljit

Singh and Dhanjit Singh were summoned to face trial. The learned Chief Judicial Magistrate summoned these persons only on the ground that while appearing in the Court, the complainant has named these persons that they had participated in committing the crime against him and the Court held that there is nothing on the record as to on what basis the Police has found the said persons as innocent and has not presented the challan against them. The learned Chief Judicial Magistrate further held that if the evidence of the complainant remains un-rebutted and even otherwise there is sufficient material on the file which would prove the guilt of Harkinderjeet Singh, Babbaljit Singh and Dhanjit Singh in committing the crime by them against the complainant.

These findings given by the learned Chief Judicial Magistrate are not as per law. It is settled law that while summoning the accused under Section 319 Cr.P.C., it should appear to the Court that the additional accused which the prosecution wants to summon appear to have been involved in the commission of the offence and they should be tried along with the accused already challaned. The standard of proof for summoning under Section 319 Cr.P.C. is somewhat more than *prima facie* case. The learned Chief Judicial Magistrate has rather given the observation that if the evidence of the complainant remains un-rebutted, there is sufficient material on the file which will prove the guilt of these persons in committing the crime. These observations are not as per law. A revision petition was also filed against this order which was also dismissed by the learned Additional Sessions Judge, S.A.S. Nagar (Mohali) vide order dated 3.8.2016 (Annexure-P.6).

[4]

A perusal of the MLR placed on record shows that there are only two injuries shown on the person of the complainant. A perusal of the FIR shows that both these injuries in the FIR, which is the first version, have been attributed to Bimalpreet Singh. Even the names of these additional accused, which the prosecution wants to summons, are not there. Rather, it is stated in the FIR that Gagandeep Singh and Sukhwinder Singh were being beaten by Bimalpreet Singh and his father Harvinder Singh and Bimalpreet's 'Taya' and his children. During investigation, the petitioners are found innocent.

Keeping in view the averments made in the FIR and the fact that in the FIR no injury has been attributed to the present petitioners, there are only two injuries as per MLR, which had been attributed to Bimalpreet Singh, I find that it does not appear from the evidence that the present petitioners are also involved in the commission of the offence and they should be tried along with the main accused.

Therefore, finding merit in the present petition, the same is allowed. The order dated 5.10.2015 (Annexure-P.4) passed by learned Chief Judicial Magistrate, S.A.S. Nagar (Mohali) and the order dated 3.8.2016 (Annexure-P.6) passed by learned Additional Sessions Judge, S.A.S. Nagar (Mohali) are hereby quashed.

December 15, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No