

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

CRM-M No.31366 of 2015

Date of decision: 10th February, 2016

Balbir Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Present: Mr. Mohd. Yousaf, Advocate
for the petitioner.

Mr. Jasjeet Dhaliwal, Dy. Advocate General, Punjab
for respondent No.1.

None for respondents No.2 to 4.

FATEH DEEP SINGH, J.

Complainant Balbir Singh (now petitioner) feeling aggrieved over the orders dated 13.07.2015 (Annexure P7) passed in revision by the Court of learned Additional Sessions Judge, Sangrur thereby upholding the orders dated 23.09.2014 (Annexure P6) passed by the trial Court of learned Sub Divisional Judicial Magistrate, Dhuri by virtue of which the learned trial Court had declined the prayer of the petitioner to summon Shinder Kaur, Balbir Kaur @ Biro and Karamjit

Kaur as additional accused under Section 319 Cr.P.C., has come up in this petition under Section 482 Cr.P.C. against both these orders.

Heard Mr. Mohd. Yousaf, Advocate for the petitioner and Mr. Jasjeet Dhaliwal, Dy. Advocate General, Punjab representing the State.

In the light of contentions on behalf of the petitioner side, the very first information made to the police is the statement of Balbir Singh which forms the FIR (Annexure P2), wherein names of respondents No.2, 3 and 4 i.e. Sinder Kaur who was armed with a Spade, Balbir Kaur @ Biro and Karamjit Kaur wife of Sarabjit Singh have been given, who along with co-accused attacked the complainant. Sinder Kaur has been attributed a blow on the head of the complainant and another blow on the lower part of his right leg, whereas, Balbir Kaur @ Biro and Karamjit Kaur have dragged the complainant by holding him from the neck. It is thereafter, these three ladies were placed in column No.2 by the police on submission of report under Section 173 Cr.P.C.

Heard.

In the light of arguments that the complainant has named these respondents and it is the police which has found them innocent. The reasons shelled out in the impugned order shows that it is the police which have found these ladies innocent, weighed in the mind of the Court which certainly is a highly erroneous and untenable reasoning. The learned trial Court has failed to give a well reasoned order taking into account the evidence of the complainant and his

witnesses during the investigations and the fact that even in the statement of PW1 Balbir Singh injured complainant during trial as PW1, wherein roles of these accused have also figured, cannot, to the mind of this Court, be, by any means, ignored as evidence by the Courts and instead needs to be termed as excessive exercise of the powers by the trial Court. Rather what is reflected from the impugned orders, the learned revisional Court has also totally misinterpreted the provisions enshrined under Sections 397 and 399 Cr.P.C. and which conclusions detailed in para No.4 of the impugned orders needs to be perused to reflect the mind of the Court and as to how there has been complete and total misuse of its powers, when the very ambit of revisional jurisdiction is very limited only to the extent as to adjudge the very legality or propriety of the findings of the Court below, when the learned revisional Court has far exceeded the same by appreciating what it was not supposed to do so by upholding the element of investigations when it is well settled law that courts are not to go merely by the findings and conclusions drawn by an Investigating Officer.

The Hon'ble Apex Court in '**Hardeep Singh v. State of Punjab and others**' **2014(3) SCC 92**, exploring the ambit and purpose of Section 319 Cr.P.C. has held that the use of word 'evidence' means material that has come before the Court during an inquiry or trial by it and not otherwise. Further holding out if from the evidence led in the trial the Court is of the opinion that a person not accused before it has also committed offence, it may summon such a

person under Section 319 Cr.P.C. It has been stressed that it is that material after cognizance is taken by a Court, that is available to it while making an inquiry into or trying an offence, that the Court can utilize or take into consideration for supporting the reasons to summon any person on the basis of evidence adduced before the Court, who may be on the basis of such material, treated to be an accomplice in commission of the offence. It was further stressed that it is the material collected by the Court that can be utilized to corroborate the evidence already recorded for the purpose of summoning any person other than the accused, and therefore, it is the *prima facie* opinion of the Court that matters.

The learned Magistrate, who was holding the trial, has though shown his satisfaction on the basis of evidence before it but the same was totally unreasoned finding as to the lack of role and involvement of respondents No.2 to 4 holding that it was not necessary to exercise its powers under Section 319 Cr.P.C. and not to proceed against them. It needs to be reasserted that in such evidence degree of proof need not be of a very high order and need not be sufficient for the ultimate conviction of these persons so summoned.

Similar question as has crept-up before this Court was also raised before the Hon'ble Supreme Court in **Hardeep Singh's case (ibid)** by way of question (v) and it was laid down that a person not named in the FIR or a person though named in the FIR but has not been chargesheeted, can be summoned under Section 319 Cr.P.C. provided that from the evidence it appears that such person can be

tried along with the accused already facing trial, sufficiently answers the arguments of the two sides.

Thus, in the totality of what has been detailed and discussed above, the impugned findings (Annexures P6 and P7) are apparently based on wrong appreciation of the evidence on the records and contrary to law and thus has resulted in miscarriage of justice necessitating intervention by this Court by way of acceptance of the instant petition thereby setting aside the impugned findings of the courts below.

(FATEH DEEP SINGH)
JUDGE

February 10, 2016
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