

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

CRM No.M-38951 of 2016 (O&M)
Date of Decision: November 29, 2016

Darshan Singh

...Petitioner

VERSUS

Sukhdev Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Fariad Singh Virk, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against Sukhdev Singh and other respondents, for quashing of order dated 01.04.2015 passed by learned Judicial Magistrate Ist Class, Khanna, vide which the application under Section 319 Cr.P.C. filed by the petitioner to summon respondents No.2 to 8 as accused, was dismissed and for quashing of the judgments dated 06.10.2015 and 01.07.2016 passed by learned Addl. Sessions Judge, Ludhiana, vide which the revision petition filed by the petitioner was also dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that an application under Section 319 Cr.P.C. was filed in the trial Court in case FIR No.232 dated 23.12.2013 to summon Raghbir Singh, Rupinder Singh, Kesar Singh, Roop Singh, Jagtar Singh, Gurmel Singh and Kulwant Singh as additional accused. It is stated in the application that the complainant has named all these persons in the

statement under Section 161 Cr.P.C. and in the legal opinion of the District

Attorney also mentioned that above-said persons were also present at the spot. It is also stated in the application that it has come in the evidence of complainant Darshan Singh that all the accused have forcibly ploughed the kacha path on 18.05.2012.

Learned JMIC, Khanna, discussed the evidence on record and held that standard of proof under Section 319 is much higher than of a prima facie case. Though the averments made by the complainant could have suffice of being a prima facie case but to prove higher standard of proof, the complainant could not prove that the alleged accused were involved in the commission of offence. It is further held that there is no specific allegation against the alleged accused persons that there was any intent of committing any offence or to annoy the complainant so as to bring the case in the ambit of trespass. The District Attorney's opinion is irrelevant and in no way, amounts to evidence. The opinion of the DA is only meant for police authorities and it is for them to act upon the opinion or not. In no way, it has any value for deciding the application under Section 319 Cr.P.C.

The perusal of the FIR also shows that general allegations have been levelled against these persons and there is no specific attribution to these persons. The order dated 01.04.2015 passed by learned JMIC, Khanna, is correct, as per evidence and law. It does not appear to the Court that these persons sought to be summoned are involved in the commission of the offence and they should be tried along with the main accused.

Further, from the record, I find that a revision petition was filed against the order dated 01.04.2015, which was dismissed by learned Addl. Sessions Judge, Ludhiana, vide judgment dated 06.10.2015, after discussing

the case on merits. Learned Addl. Sessions Judge, Ludhiana, also held that

these persons, whom the petitioner wants to summon, are not impleaded and in this way, the revision is also not maintainable. The judgment dated 06.10.2015 passed by learned Addl. Sessions Judge, Ludhiana, is also correct and as per law. The revisional Court has discussed the order dated 01.04.2015 passed by learned Magistrate on merits and has upheld the same. As no adverse order has been passed against the persons who have not been impleaded, therefore, the order passed by learned Addl. Sessions Judge, Ludhiana, is legal.

The present petitioner again filed a revision before learned Addl. Sessions Judge, Ludhiana, after a long period, challenging the same order dated 01.04.2015 passed by learned JMIC, Khanna, which was also dismissed by learned Addl. Sessions Judge, Ludhiana, vide judgment dated 01.07.2016, by stating that the revision petition has already been dismissed by the Sessions Court on merits vide judgment dated 06.10.2015 and second revision is not maintainable.

In view of the above discussions, I find that the order dated 01.04.2015 and judgments dated 06.10.2015 and 01.07.2016 passed by the Courts below are correct, as per evidence and law. No illegality has been committed by the Courts below while passing the impugned order and judgments.

Therefore, finding no merit in the present petition, the same is dismissed.

November 29, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No