

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Revision No.2213 of 2013 (O & M)

Date of Decision: *January 06, 2016*

Naib Singh & another

..... PETITIONERS

VERSUS

Dalbara Singh son of Faqiria Singh

..... RESPONDENT(S)

. . .

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?

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PRESENT: - Mr. Vivek Rattan, Advocate, for the petitioners.

 Mr. Pankaj Maini, Advocate, for the respondent.

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Jaspal Singh, J

1. Challenge in this revision petition is to order dated May 10, 2013 passed by learned Additional Sessions Judge, Sangrur, whereby order dated October 11, 2012 passed by the Sub Divisional Judicial Magistrate, Dhuri, vide which an application under Section 319 Cr.P.C. moved by complainant Dalbara Singh son of Faqiria Singh was dismissed, has been set aside and the learned

Magistrate was directed to reappraise the evidence and decide the application under Section 319 Cr.P.C. afresh.

2. The contentions of learned counsel for the petitioners are that petitioners were summoned to face trial by the learned Magistrate under Section 500 IPC vide order dated November 14, 2005 whereas complaint against Darbara Singh son of Mehar Singh was dismissed. Since the date of their summoning, petitioners are facing the agony of trial as one after other application is being moved under Section 319 Cr.P.C. for summoning Darbara Singh son of Mehar Singh against whom the complaint was dismissed. In fact, the petitioners have become sufferers and are facing the agony of trial since the year 2005. The case is at penultimate stage and statements of petitioners under Section 313 Cr.P.C. have already been recorded by the trial court but trial is still pending because passing of final order has been stayed by this Court. Alternatively, the petitioners have sought segregation of their case from the proceedings which are pending, if any, qua Darbara Singh son of Mehar Singh.

3. On the other hand, learned counsel for the respondent has submitted that though Darbara Singh son of Mehar Singh was not summoned to face trial but an application under Section 319 Cr.P.C. for summoning him as additional accused to stand trial with the accused, already facing trial, was moved and the proceedings qua the said application is still pending. Since allegations qua all the

accused are same, the matter is required to be dealt with and disposed of in its entirety, otherwise, it will cause prejudice to the complainant.

4. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and have gone through the record.

5. A glance at the impugned orders as well as the revision petition transpires that the petitioners have no locus-standi to challenge order dated May 10, 2013 as they cannot said to be the aggrieved persons. However, it is an admitted fact that after passing of summoning order dated November 14, 2005, petitioners are facing agony of trial. They have to appear on each and every date fixed by the trial court. Even at present, Darbara Singh son of Mehar Singh cannot be termed to be an accused because application moved under Section 319 Cr.P.C. has not been allowed. In case, application under Section 319 Cr.P.C. is allowed at any stage, for summoning Darbara Singh son of Mehar Singh, it would amount to de-novo trial of present petitioners also qua whom the entire evidence has already been adduced by the prosecution/complainant and their statements under Section 313 Cr.P.C. have been recorded.

6. In similar situation, Hon'ble Apex Court in Narcotic Control Bureau Vs. Harnath, 1995 Crl.L.J. 2770, it was held that "where the earlier trial of nine accused persons was at its conclusion, clubbing of the trial of the tenth accused charged for the

same offence and do novo trial of the ten accused persons was held not proper”. This Court is also, thus, of the considered view that it would be apt, proper and in the interest of justice that trial/proceedings qua petitioners be separated and the proceedings, if any, are pending or are likely to arise qua Darbara Singh son of Mehar Singh, shall be dealt with and disposed of separately by the trial court. Order dated July 22, 2013 passed by this Court whereby passing of final order was stayed is vacated and the trial court is directed to proceed with the complaint and dispose of the same in accordance with law.

7. The petition stands disposed of accordingly.

January 06, 2016
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(Jaspal Singh)
Judge