

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 227

Criminal Miscellaneous No.M-9221 of 2015 (O & M)

Date of Decision: September 24, 2016

Lajinder Singh & another

..... PETITIONERS

VERSUS

State of Punjab & another

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. Rajinder Kumar Singla, Advocate, for the petitioners.

Mr. J.S. Sekhon, Assistant Advocate General, for respondent
No.1 – State.

Mr. A.K. Khunger, Advocate, for respondent No.2.

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Jaspal Singh, J

1. By virtue of instant petition preferred under Section 482 Cr.P.C., petitioner has sought quashing of criminal complaint No.846 dated May 19, 2009/ April 28, 2014 titled 'Sumanjit Singh vs. Sukhwinder Singh & others' filed by respondent No.2 under Sections 307, 325, 324, 323, 148, 149, 217, 218 IPC and under the Arms Act; summoning order dated August 23, 2014 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Fazilka; as well as order dated January 17, 2015 (Annexure P-4) passed by learned Additional Sessions Judge, Fazilka, alongwith consequent proceedings.

2. The only point which requires consideration in this case is whether second application under Section 319 Cr.P.C. is maintainable after dismissal of previous one on the same ground(s) on the basis of same evidence with no change in fact situation? The answer to this question is in the negative.

3. It is pretty settled that once an application under Section 319 Cr.P.C. has been dismissed by the trial court on the basis of same grounds and same evidence, the second application is not maintainable until and unless substantial change in facts situation is proved.

4. Adverting to the facts of the case in hand, it is an undisputed fact that in respect of an occurrence, alleged to have taken place on July 23, 2008 between Sukhwinder Singh & others on one side and Sumanjit Singh (respondent No.2) & other on the other side, FIR No.258 dated July 22, 2008 under Sections 452, 323, 148, 149 IPC was registered at Police Station, Sadar, Fazilka against respondent No.2 & others. Even a cross version was also registered against the petitioners & other co-accused and subsequently, vide DDR No.18 dated July 28, 2008, addition of offence under Section 307 IPC as well as offence under Sections 25 & 27 of Arms Act, 1959 was made, whereas an offence under Section 325 IPC was enhanced qua respondent No.2 party. Subsequent thereto, after presentation of challan in version and cross version case, complainant – respondent No.2 filed criminal complaint No.846 dated May 19, 2009/ April 28, 2014 titled ‘Sumanjit Singh vs. Sukhwinder Singh & others’ which is pending in the court of Judicial Magistrate Ist Class, Fazilka.

5. During pendency of the cross version case, in which petitioner and Sukhjit Singh were found innocent by the police, got registered by respondent No.2 – Sumanjit Singh (complainant). Respondent No.2 moved an application under Section 319 Cr.P.C. before Judicial Magistrate Ist Class, Fazilka for summoning petitioner as well as Sukhjit Singh as additional accused, which was allowed. Aggrieved against the said order, petitioner filed revision petition before the Additional Sessions Judge and it was allowed vide order dated July 27, 2012 whereby summoning order passed by the learned Magistrate, on application under Section 319 Cr.P.C. was set aside.

6. After the addition of offence under Section 307 IPC against

pertaining to the version and cross version arising out of FIR No.258 dated July 22, 2008 which was entrusted to the court of Additional Sessions Judge, Fazilka for disposal. After framing of charge against Sukhwinder Singh and others, a fresh application under Section 319 Cr.P.C. was filed by prosecution for summoning petitioners and co-accused Sukhjot Singh as additional accused. However, said application was dismissed by Additional Sessions Judge vide order dated August 22, 2014. After dismissal of the aforesaid application moved by the prosecution under Section 319 Cr.P.C., in the case pertaining to the FIR No.258 dated July 22, 2008, respondent No.2 – complainant filed revision No.3239 of 2014 titled ‘Sumanjeet Singh vs. State of Punjab & others’ for setting aside order dated August 22, 2014 passed by the Additional Sessions Judge, Fazilka. However, the aforesaid revision petition was dismissed by this court vide order dated February 12, 2015.

7. In the above referred complaint No.846 dated May 19, 2009/ April 28, 2014, captioned as ‘Sumanjit Singh vs. Sukhwinder Singh & others’ whereby petitioner alongwith Sukhjot Singh etc. were again summoned to face trial under Sections 307, 323, 324, 148, 149 IPC as well as under the provisions of Arms Act vide order dated August 23, 2014, thereafter petitioners filed an application for dismissal of the complaint qua them but that application as dismissed by the trial court vide order dated January 17, 2015 which has necessitated the filing of instant petition.

8. The only point which requires consideration in the instant case is whether after dismissal of an application under Section 319 Cr.P.C., another complaint/summoning order is maintainable, passed in a complaint case based upon the same ground, same evidence without any change in fact situation, and the answer to this question is in the negative.

9. Undisputably, FIR No.258 dated July 22, 2014 was got registered by Sumanjeet Singh – complainant in which petitioners were also named as

presentation of report under Section 173(2) Cr.P.C., they were kept in column No.2. In the said case, application moved under Section 319 Cr.P.C. has culminated in its dismissal upto this court. Subsequently, Complaint No.846 was filed on the basis of similar allegations as well as same evidence and same set of witnesses in which the petitioners were again summoned to face trial vide order dated August 23, 2014. The said order as well as complaint is not sustainable, especially in view of dismissal of the previous application filed in FIR case, under Section 319 Cr.P.C., upto this court.

10. Thus, complaint No.846 dated May 19, 2009/ April 28, 2014 (Annexure P-2), summoning order dated August 23, 2014 (Annexure P-3) as well as order dated January 17, 2015 (Annexure P-4) passed by the Additional Sessions Judge and all subsequent proceedings arising out of complaint are quashed qua the petitioners by way of acceptance of the instant petition.

September 24, 2016
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No