

CRR No.1189 of 2015 (O&M)

[1]

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

Sr. No. 228

CRR No.1189 of 2015 (O&M)

Date of decision: September 23, 2016

Jagdev Kumar and others

.... Petitioners

Versus

State of Punjab and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Pawan Kumar Gupta, Advocate,
for the petitioners.

Mr. B.S. Cheema, Deputy Advocate General,
for respondent No.1-State of Punjab.

Ms. Archana Vashisht, Advocate for
Mr. Padamkant Dwivedi, Advocate,
for respondent No.2.

JASPAL SINGH, J. (ORAL)

CRM No.10715 of 2015

Application is allowed as prayed for.

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Challenge in this revision petition is to the order dated March 07, 2015 passed by Additional Sessions Judge, Ropar, whereby an application moved under Section 319 Cr.P.C. filed by the prosecution for summoning Ashok Kumar, Jagdev Kumar, Gurmukh Singh, Nadar Khan and Ramesh Kumar was allowed and they were summoned to stand trial under Sections 323, 427, 506 IPC and Section 3(1) (iii & iv) of Scheduled Castes and

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Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC & ST Act') along with their co-accused namely Gurdev Chand and Chandan Kumar

2. First and foremost, the contention of learned counsel for the petitioners is that impugned order is not sustainable in the eyes of law, as there is no cogent and convincing evidence adduced by the prosecution to establish even their prima facie involvement in the occurrence.

3. He has further submitted that on evaluation of the entire evidence by the Investigating Officer, the petitioners were found innocent and it was only due to the said reason, while submitting the report under Section 173 (2) Cr.P.C., their names have been mentioned in column No.2. No specific overt act has been attributed to any of the petitioners and they have summoned to face trial vide impugned order dated March 07, 2015, on the basis of sole statement of Gurmit Chand-complainant and PW-2 Surjit Singh. This court has evaluated the entire evidence available on file including the statement of complainant-Gurmit Chand as well as alleged eye-witness Surjit Singh-PW-2, but find that no overt act has been ascribed to Nadar Khan and Ashok Kumar. Though, there is some evidence showing the involvement of Gurdev Chand and Chandan Kumar petitioners. Gurdev Chand is alleged to have been armed with 'Daggar' whereas Chandan Kumar was allegedly armed with 'Datar' and they assaulted the complainant. But nothing has been specifically attributed to either Nadar Khan or Ashok Kumar. Thus bald allegation qua Nadar Khan and Ashok Kumar to establish their involvement is not suffice. No injury or any other role has been attributed to them. Thus, their summoning under Section 319 Cr.P.C. for

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facing trial along with co-accused Gurdev Chand and another is not factually and legally justified.

4. In the light of what has been discussed above, instant revision petition is partly allowed and the impugned order dated March 07, 2015 qua Nadar Khan and Ashok Kumar is set aside, whereas qua the remaining petitioners namely Jagdev Kumar and Ramesh Kumar stands dismissed.

September 23, 2016

Ankur

**(JASPAL SINGH)
JUDGE**

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No