

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

CRR No.1871 of 2015.

Decided on:-November 10, 2016.

Dalbir Kaur.

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Rahul Bhargava, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.

Mr. H.S. Randhawa, Advocate for
Mr. P.S. Ahluwalia, Advocate
for respondents No.2 to 5 and 7.

HARI PAL VERMA, J.

Petitioner Dalbir Kaur as filed present revision petition against order dated 16.4.2015 passed by learned Additional Sessions Judge, Amritsar whereby the application under Section 319 Cr.PC filed by the prosecution for summoning of respondents No.2 to 7 i.e. Manmohan Singh son of Harnam Singh, Surjit Singh @ Bittu son of Harnam Singh, Sukhwinder Singh @ Kannedy son of Avtar Singh, Harjinder Singh @ Lali son of Tarlok Singh, Sarabjit Singh @ Gintu son of Tarlok Singh and Kuldip Kaur wife of Sukhwinder Singh, was dismissed.

Learned counsel for the petitioner has argued that once the allegations have been made against the respondents No.2 to 7 from the very beginning and civil dispute is also pending between the parties regarding forcible possession taken by the accused in connivance with each other, all the accused were liable to be summoned to face trial. The respondents No.2 to 7 (accused sought to be summoned) are actively involved in the commission of crime along with other co-accused, who are already facing trial.

Learned counsel for the petitioner has further argued that respondents No.2 to 7 were directly involved in the commission of crime and are not the first offenders, rather, they are habitual offenders. Their names duly find place in the FIR. The petitioner-complainant who has been examined as PW2 before the trial Court, has specifically deposed against the respondents-accused, but they have not been challaned by the police. The petitioner while appearing as PW2 has deposed that the respondents-accused have forcibly occupied her land with the help of Harjinder Singh and Saravjit Singh for which a civil suit is also pending between the parties. She suspected that Harjinder Singh, Sarabjit Singh, Manmohan Singh, Surjit Singh, Sukhwinder Singh and Kuldip Kaur had hatched a conspiracy and murdered her son and daughter-in-law.

On the other hand, learned counsel for the respondents No.2 to 7 has argued that the petitioner-complainant is not an eye-witness of the occurrence. She has improved her version by way of statement of Bachhitar Singh as PW3. As per prosecution case, Bachhitar Singh (PW3) was an eye-

witness of the occurrence and in his statement under Section 161 Cr.PC, he has elaborated the occurrence that in what manner, the accused facing trial had committed the offence, but while deposing in the Court as PW3, he has totally taken a somersault and deposed that the respondents-accused and the accused present in the Court were not the same persons who took part in the commission of crime, rather, some other persons had committed the crime.

Learned counsel for the respondents-accused has further argued that the cause of action to file the present revision petition no more survives as trial has already been concluded and the accused who were facing the trial have already been acquitted of the charge levelled against them by the trial Court vide judgment dated 17.3.2016. In support of his contention, learned counsel has relied upon the judgment of this Court in ***Harjinder Singh Versus State of Haryana and others 2013(1) RCR (Criminal) 1038***.

I have heard learned counsel for the parties.

It is not in dispute that the petitioner-complainant had named the respondents No.2 to 7 in the FIR, but at the same time, the police had investigated the matter and did not find any material against them. The application under Section 319 Cr.PC had been filed on the basis of improved version of Bachhitar Singh as PW3. He was an eye-witness of the occurrence and his statement under Section 161 Cr.PC was accordingly recorded, but while deposing in the Court, he had completely changed the version of participation of the accused in the crime and had rather stated that the accused present in the Court were not the same persons, who participated in the crime, rather, some other persons had committed the crime. Therefore,

once petitioner-complainant Dalbir Kaur as PW2 was not an eye-witness of the occurrence and the other witness, namely, Bachhitar Singh as PW3 had totally taken a somersault to his previous statement recorded under Section 161 Cr.PC, the trial Court had not committed any illegality in disbelieving them. The version of PW3 is totally improved one of his initial version and, therefore, he cannot be believed. The prosecution has not placed on record any material which may draw an inference that respondents No.2 to 7 had participated in the commission of crime.

This Court cannot ignore the fact that even otherwise, the trial in the case has already been concluded and the accused, who were facing the trial (except accused Jugraj Singh alias Jagga, who has been declared as proclaimed offender) have already been acquitted by learned Additional Sessions Judge, Amritsar vide judgment dated 17.3.2016. The pendency of trial is a condition precedent for summoning the additional accused under Section 319 Cr.PC as has already been held by this Court in ***Harjinder Singh's case (supra)***.

Moreover, the summoning is not to be issued only on mere existence of prima-facie evidence, rather, as held by Hon'ble Apex Court in the case of ***Hardeep Singh Versus State of Punjab AIR 2009 SC 483***, it has to be more than the prima-facie evidence. The Court will issue summoning of a person as an accused only if sufficient material is made available on record which, would otherwise reasonably lead to conviction of the person sought to be summoned. But in the case in hand, no such material is

available on record which may warrant summoning of respondents No.2 to 7 as additional accused.

In view of the above, this Court does not find any illegality, irregularity or perversity in the impugned order dated 16.4.2015 passed by learned Additional Sessions Judge, Amritsar. Therefore, affirming the same, the present revision petition, being devoid of any merit, is dismissed.

November 10, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No