

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.2890 of 2015

.....

Date of decision:22.11.2016

Sarabjit Singh Cheema

...Petitioner

v.

State of Punjab and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. S.P.S. Sidhu, Advocate for the petitioner.

Mr. P.S. Grewal, Deputy Advocate General, Punjab for the
respondent-State.

Mr. Vivek Suri, Advocate for respondent No.2.

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Inderjit Singh, J.

This criminal revision petition has been filed under Section 401 Cr.P.C. challenging the impugned order dated 19.2.2015 passed by learned Additional Sessions Judge, Patiala, whereby application filed under Section 319 Cr.P.C. has been allowed and Sarabjit Singh Cheema, the then SHO has been summoned to face trial.

It has been stated in the criminal revision petition that the order dated 19.2.2015 passed by the learned Additional Sessions Judge, Patiala, vide which the petitioner has been summoned under Section 319 Cr.P.C. to face trial in case FIR No.154 dated 6.10.2009 registered for the offences

under Sections 380, 427, 323, 447, 452, 148 and 149 IPC at Police Station Julkan, Patiala, is against law and facts and being unsustainable in the eyes of law and liable to be set aside.

Notice of motion was issued in this case.

Mr. P.S. Grewal, learned Deputy Advocate General, Punjab, has put in appearance on behalf of the respondent-State and Mr. Vivek Suri, learned Advocate has appeared for respondent No.2 and contested this revision petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that the FIR in the present case was got recorded by Parkash Singh. The brief facts as stated in the criminal revision petition, are as under:-

“That the facts, in brief, leading to the filing of the present petition, are that the petitioner has been falsely hauled up in the above noted case, which was got registered on the basis of the statement of the complainant-Parkash Singh. For the kind perusal of this Hon'ble Court, a gist of the FIR, when translated into English, is being reproduced herein below:-

“At this time, a statement of Parkash Singh son of Arjun Singh, caste Noongair, resident of Dundi Majra, Police Station Julkan written by ASI Nirmal Singh has been received through Constable Dharam Singh at Police Station for registration of a case against Amar Singh,

Pala Singh, Deputy Bir, Raja Ram, Parkash Chand son of Narata Ram, all residents of Village Ram Nagar Chunni Wala @ Devi Garh along with 30-35 unknown persons.

The same statement is as under:-

That I am resident of Dundi Majra and I am agriculturist. I am having two sons, namely, Gurpal Singh and Kuldeep Singh, who are having shops at turn of Village Devigarh. Gurpal Singh is having a grocery shop and Kuldeep Singh is having a shop of photographer. Qua these two shops, Parkash Chand son of Narata Ram, resident of Devigarh Chhuniwala has executed an agreement to sell in favour of my son Gurpal Singh, Kuldeep Singh and Dharam Pal. These shops are in our possession from the last about 8 years and a case is pending qua these two shops before Patiala Court. Today, I along with my sons were present at the shops and it was at about 6/7 p.m., then Amar Singh, Pala Singh, Deputy Bir, Raja Ram sons of Parkash Chand and Prakash Chand Ex. Sarpanch son of Narata Ram along with 30-35 persons came there on a tractor trolley and in one car. Then they started putting articles from our shops in the trolley. We raised alarm, then they started beatings. Then we ran away from the spot due to fear that they may not cause us injuries as they were many persons. We identified them in the

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electric lights. When they went away from there, they checked the articles of our shops and found that they committed theft of two computer sets, 2 printers, 2 cameras, 1 photostat machine, pro-lights, UPS Inverter sets, 2 televisions, 2 mobile of Reliance Company bearing No.9316948718 which is in the name of Kuldeep Singh and 9023706551 which is in the name of Dharam Pal and other articles from grocery shop and from studio they took photographs etc., CD data, cassettes of marriages and they also damaged many articles. This occurrence, they have committed, under a planned conspiracy. My statement is recorded, the same is correct. Action be taken. Sd/- Parkash Singh.

Verification: Nirmal Singh ASI.”

A perusal of the record shows that the challan was presented against Amar Singh, Pala Singh, Deputy Bir, Bira and Raja Ram in FIR No.154 Dated 6.10.2009 for the offences under Sections 380, 323, 447, 148 and 149 IPC registered at Police Station Julkan, District Patiala.

During the trial, an application under Section 319 Cr.P.C. for summoning Sarabjit Singh Cheema as an additional accused was filed on the ground that there is sufficient material against him at this stage which *prima facie* discloses his role in the criminal act alleged against the accused facing trial.

The learned Additional Sessions Judge, Patiala, vide impugned

order dated 19.2.2015 summoned the present petitioner Sarabjit Singh Cheema, the then SHO to face trial. A perusal of the record shows that in the FIR there is no allegation against the present petitioner. Even in the statements before the Court the only allegation by PW-1 Parkash Singh-complainant is that he was present on the scene of the crime and he had instigated the commission of the offence by other respondents. It is stated by PW-1 that on 6.10.2009 Sarabjit Singh Cheema, SHO along with 4-5 police officials were standing outside the shops. The witness has been duly contradicted by the FIR which was got registered by him. Qua Sarabjit Singh Cheema there was nothing in the FIR.

Learned counsel for the private respondents and learned State counsel mainly relied upon the inquiry conducted by Shri Ranbir Singh Khatra, Senior Superintendent of Police, Patiala and the status report filed by him in the Court.

First of all, the inquiry report produced before the Court itself is not a per se admissible document. It is to be proved by the witness, who has conducted the inquiry and then the other statements of the witnesses on which the inquiry officer has relied upon are to be proved. That evidence is also to be produced before the Court. Even perusal of enquiry report shows that the allegation is that SHO had registered the FIR for the offences under Sections 380 and 427 IPC and has not added the offence under Section 447 IPC. If any section is not recorded in the FIR, it will not amount to the offence of instigation or involvement of the SHO in the commission of the offence. Otherwise also, Section 447 IPC is punishable only with the

imprisonment of three months and fine of ₹500/-. Again in the inquiry, it has been stated that he had wrongly registered the cross-case against the complainant side. It is specifically written that at the time of occurrence on 12.11.2009, neither the SHO nor any Police officials were present there.

A perusal of the inquiry report also shows that, at the most, it can be held as a negligence on the part of SI Sarabjit Singh Cheema, SHO of Police Station Julkan. There is nothing, at this stage, to show that he was the beneficiary nor there is any allegation of taking bribe etc. An additional accused can be summoned only when it appears to the Court from the evidence on record that he is involved in the commission of the offence. He had not stolen anything and not committed trespass or committed any mischief. To prove the conspiracy, it does not appear to this Court, at this stage, from the evidence that he was also involved in the commission of the offence. Further more, a complaint was filed regarding the same occurrence for the offences under Sections 395, 447, 109, 427, 148, 149 and 120-B IPC before the learned Judicial Magistrate Ist Class, Patiala, which has also been dismissed by the learned Judicial Magistrate Ist Class, Patiala, vide order dated 16.9.2013. A revision petition filed against that order was also dismissed by the learned Additional Sessions Judge, Patiala, vide order dated 7.10.2014.

Keeping in view the above discussion, I find that the accused is to be summoned under Section 319 Cr.P.C. only on the basis of evidence produced before the Court and when the Court is satisfied from the evidence that it should appear to it that he is involved in the commission of the

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offence and also should be tried along with the main accused, who are facing trial.

Learned counsel for the petitioner also placed on record a certified copy of the judgment dated 1.7.2016 passed by learned Additional Sessions Judge, Patiala, vide which the main accused have also been acquitted.

Therefore, from the above discussion, I find that the order dated 19.2.2015 passed by the learned Additional Sessions Judge, Patiala, by summoning the present petitioner under Section 319 Cr.P.C is not as per evidence and law and the same is set aside.

Therefore, finding merit in the criminal revision petition, the same is allowed.

November 22, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No