

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

CRR No. 4908 of 2015

Date of decision : October 20, 2016

* * * * *

Surinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. A.D.S Sukhija, Advocate for the petitioner.

Mr. J.S Riar, AAG, Punjab.

* * * * *

RITU BAHRI, J.

The present revision petition has been filed against the order dated 22.7.2015 (Annexure P-8) passed by the Additional Sessions Judge, Jalandhar, whereby the application under Section 319 Cr.P.C was allowed and the petitioner was summoned as an additional accused to face trial and against the impugned charge sheet dated 23.10.2015 whereby the petitioner has been charge sheeted under sections 308, 452, 323, 354 read with Section 149 & 148 IPC.

FIR No. 19 dated 29.1.2014 (Annexure P-1) was registered on a statement made by Kulwinder Kaur alleging that on 29.1.2014 at around 7.00 to 7:15 p.m when she along with her younger sister Jasvir Kaur reached home, they saw 10 to 12 persons including Suresh Kumar, Vinod,

Thomas son of John Peter resident of Sansar Pur, Suresh Kumar's two sons and two sons of Thomas, Surinder Singh Saini son of Laskar Singh, Kashmir Singh son of Ajit Singh armed with swords, spear, sickle (datar) and other dangerous weapons attacked them and tore their clothes. Her Sister Jasvir Kaur was hit with the intention to kill with sharp edged weapon and suffered a deep injury on the head. They picked her and took her outside and tore her clothes. They pushed Anup Kaur daughter of Kulwinder Kaur and caused injuries to her. For help, Anup Kaur called on the number 181 and raised alarm. On hearing the hue and cry, people gathered. On seeing the gathering of the people, all the assailants left the spot after giving threats of dire consequences. In this background, FIR No. 19 dated 29.1.2014 was registered at Police Station Sadar Jalandhar under Sections 307, 354-A, 452, 324, 323, 506, 120-B, 148, 149 IPC.

After registration of this FIR, the enquiry was conducted. Accused Suresh Kumar and Vinod Kumar were arrested on 12.3.2014 and challan was presented against them on 12.6.2014. Thereafter, one more accused namely Kulwant Singh was got arrested on 4.2.2015 and thereafter the supplementary challan was presented against him on 6.2.2015. The present petitioner has been summoned by the impugned order dated 22.7.2015 (Annexure P-8) passed by the Additional Sessions Judge, Jalandhar on an application made under Section 319 Cr.P.C.

Counsel for the petitioner has argued that the petitioner had been summoned on the basis of deposition of the complainant PW-1, Kulwinder Kaur. While appearing as PW-1, she stated that Thomas had given fist blow at the nose of her sister Jasvir Kaur and then Surinder Singh and Ranbir Singh caught hold of her arms. Kulwant Singh and Kashmir

Singh torn her clothes to outrage her modesty. The present petitioner Surinder Singh cannot be summoned on the basis of her oral deposition only. After the impugned order was passed, the charge sheet was issued against him on 23.10.2015.

Learned counsel has further argued that the petitioner had purchased a plot from one Baba Saudagar Singh who was an attorney holder of the original owners Jaspal Singh Kalar and Sarabjit Singh Kalar and the petitioner is owner in possession of the said plot since that date. This property was being claimed by one Amandeep Kaur daughter of Kulwinder Kaur, complainant. A civil suit was filed by Amandeep Kaur and her daughter Noorie through Attorney namely Kulwinder Kaur in which the petitioner was also arrayed as defendant. A copy of the plaint has been annexed as Annexure P-5. Thereafter even a complaint was made by Jasvir Kaur, sister of the complainant and proceedings were initiated under Section 107/150 Cr.P.C but vide a statement dated 31.3.2014 (Annexure P-6), she had stated before the Additional Deputy Commissioner, Jalandhar that she had compromised the matter with the petitioners and does not want to proceed further. He has further argued that as per the deposition of Jasvir Kaur (Annexure P-4), no specific role has been attributed to the present petitioner and she being the victim did not state that her clothes were torn. She further stated that she was being threatened by the petitioner to give back the plot to them to which she did not agree. She further stated that the petitioner is a property dealer and was giving her threatening calls. She admitted that proceedings have been initiated against them under Section 107/150 Cr.P.C. Another complaint was made by Jasbir Kaur against present petitioner and Suresh Kumar about sexual harassment and this

complaint after enquiry was filed by the Commissioner of Police, Jalandhar.

On notice, a reply by way of Affidavit of Mukesh Kumar (PPS), Assistant Commissioner of Police, Cantonment, Jalandhar has been filed on behalf of the respondent on 20.10.2016. In paragraph no.2 of this reply, it has been clarified that on the date of the incident i.e on 29.1.2014, the petitioner Surinder Singh Saini had gone to the office of his Advocate and this fact is also verified by the CCTV footage of the Advocate's Office. He was at the office of the Advocate at 5.30 p.m and thereafter he had left for village Jandu Singla to collect the Theka amount of his land. The call details and tower location of the mobile telephone of the petitioner was also sought from Technical cell which also made it clear that the petitioner was not present at the spot of incident rather he was away in village Jandu Singla. After taking into consideration the above said facts, the petitioner Surinder Singh Saini was found innocent in the inquiry conducted by Assistant Commissioner of Police, Cantonment, Jalandhar on 12.3.2014, whereby the same was got approved from the commissioner of police on 2.2.2015. The petitioner Surinder Singh Saini and others Thomas, Andrew, David, Danish, Daniel, Ranbir Singh or Kashmir Singh were kept in column no.2 of the supplementary challan as he was declared innocent during the inquiry proceedings. Keeping in view the details of the enquiry, the presence of Surinder Singh on the date of the incident becomes doubtful. Moreover as per the deposition of PW-1, Kulwinder Kaur, Surinder Singh and Ranbir Singh caught hold of her sister Jasvir Kaur and thereafter Kulwant Singh and Kashmir Singh torn the clothes of her sister to outrage her modesty. But, the statement of Jasvir Kaur does not disclose any such

fact with regard to Surinder Singh. In her statement, Jasvir Kaur stated that Surinder Singh had threatened her to give the plot back and she also got a case registered under Section 107/150 Cr.P.C against Kashmir Singh and Surinder Singh. The deposition of Jasvir Kaur is sufficient to come to a conclusion that there was a dispute with regard to a plot between the petitioner and Kulwinder Kaur as is evident from the copy of the complaint (Annexure P-5). In view of the deposition of Kulwinder Kaur PW-2 and Jasvir Kaur PW-6 and the status report filed by the Assistant Commissioner of Police dated 20.10.2016, the presence of petitioner at the time of the alleged incident becomes doubtful. Moreover, the statements of Jasvir Kaur and Kulwinder Kaur are contradictory to each other. No such role has been attributed to the petitioner and even this statement is contradictory to the statement made by the victim Jasvir Kaur while appearing as PW-6, she does not state anywhere that her clothes had been torn in the accident.

In view of all that has been discussed above, the revision petition is being allowed. Impugned order dated 22.7.2015 (Annexure P-8) passed by the Additional Sessions Judge, Jalandhar summoning the present petitioner as additional accused is set aside qua the petitioner.

October 20, 2016

ritu

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No