

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

**Crl. Rev. No.M-960 of 2015
Date of decision : 04.03.2016**

Brij Lal and another

.....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. A.K. Walia, Advocate
for the petitioners.

Ms. Harsimrat Rai, DAG, Punjab.

Mr. B.D. Sharma, Advocate
for respondent no.2.

ANITA CHAUDHRY, J(ORAL)

The petitioner has assailed the order dated 18.07.2014, vide which charge has been framed against the petitioner.

The allegations in the FIR against Sandeep and Raj Kumar were that they had raped the complainant. After a few days Brij Lal @ Vijay and Jaswant Kumar came to know about the incident and they started teasing the complainant and whistled at her. On another day the petitioners were alleged to have pulled her Chunni. The police investigated into the matter and had filed a composite charge-sheet against all the accused. The case was committed and challan had been presented. Charge was framed on 18.07.2014.

The counsel for the petitioners contends that the petitioners could not be tried with the main accused as the act attributed to the main accused was different nor it was in continuation of the occurrence alleged against the main accused. The counsel had contended that the petition filed by Sonu @ Ramesh and Pawan had been allowed against whom similar allegations as those levelled against the petitioner were made.

Learned counsel for the petitioner refers to ***Balbir v. State of Haryana and another*** reported as AIR 2000 Supreme Court 11 and ***Amar Singh and another v. The State*** reported as AIR 1954 Punjab 106.

As per learned counsel for the petitioner, only those persons who are covered within the parameters of Section 223 of the Cr.P.C. can be tried and charged jointly.

Section 223 of the Cr.P.C. is in the following terms:-

"223. What persons may be charged jointly. The following persons may be charged and tried together, namely:-

- (a) persons accused of the same offence committed in the course same transaction;
- (b) person accused of an offence and persons accused of abetment of, or attempt to commit, such offence;
- (c) person accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;
- (d) persons accused of different offences committed in the course of the same transaction;
- (e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and

persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such lastnamed offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860). or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges: Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.”

Looking at the accusation set up in the complaint, I find that the petitioners did not commit the same offence in the course of the same transaction and could not be tried jointly with Sandeep and Raj Kumar. Keeping in view the exposition of law it has to be held that the present petitioners do not come within any of the categories mentioned in Section 223 of the Code of Criminal Procedure. Consequently they cannot be tried along with the main accused. This, however, cannot mean that an

independent action cannot be brought against them for the actions attributed to them. A separate challan can be submitted

With these observations the petition is allowed and the impugned order dated 18.07.2014 framing charge is set aside.

04.03.2016

sunil

**(ANITA CHAUDHRY)
JUDGE**