

CRR No. 496 of 2016 (O&M)
DECIDED ON: OCTOBER 04, 2016

PAWAN KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB & ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Amandeep Singh Manaise, Advocate
for the petitioner.

Mr. J.S. Sekhon, AAG, Punjab.

JASPAL SINGH, JCRM No. 4297 of 2016

In view of averments made in the application, the same is allowed and delay of 8 days in filing the instant revision petition is condoned.

CRR No. 496 of 2016

Challenge in this revision petition is to the order dated October 28, 2015 passed by learned Additional Sessions Judge, Gurdaspur vide which order dated July 16, 2015 passed by learned Judicial Magistrate Ist Class, Gurdaspur, has been set aside and an application moved under Section 319 of the Code of Criminal Procedure (for brevity 'Code') by the prosecution for summoning respondent No.2-Rajni Bala, as an additional accused, has been declined.

The contention of learned counsel for the petitioner is that petitioner/complainant got registered FIR No. 76, dated May 28, 2013, under

Sections 452, 324 and 34 IPC against Narinder Kumar and Rajni Bala-respondent No.2 on the allegations that on May 27, 2013 at about 9.45 pm, Narinder Kumar as well as his wife Rajni Bala trespassed into his house with common intention to cause injuries to him. At that time, Narinder Kumar was armed with 'datar', though respondent No.2-Rajni Bala was empty handed. But on the instigation of Rajni Bala-respondent No.2, Narinder Kumar opened an attack and dealt 'datar' blow on the head of the petitioner. During investigation of the case, Rajni Bala-respondent No.2 was declared innocent. While presenting the report under Section 173(2) of the Code only against Narinder Kumar, the name of Rajni Bala-respondent No.2 was mentioned in column No.2 of the report.

Learned counsel for the petitioner further contended that the petitioner/complainant appeared in the witness box as PW-2 before learned trial Court and in his statement, it is also categorically stated by him that Ranji Bala-respondent No.2 raised a lalkara to caught hold of him and teach him a lesson. It was only upon her instigation, Narinder Kumar dealt 'datar' blow on the right side of his forehead as well as on the upper side of his right ear. The active participation as well as presence of respondent No.2 is prima facie established. While relying upon the judgment rendered by Hon'ble Apex Court in the case of **Hardeep Singh v. State of Punjab and others; 2014 (1) RCR (Criminal) 623**; it has been submitted by learned counsel for the petitioner that only a *prima facie* case is to establish, with regard to the complicity of a person to be summoned as an additional accused. Thus, the impugned order dated October 28, 2015 is not sustainable in the eyes of law and is liable to be set aside.

On the other hand, learned State counsel has supported the impugned order and has submitted that the same is absolutely in consonance with the

evidence collected by the investigating agency and as such, it does not require any interference.

This Court has given a deep thought to the rival submissions made by learned counsel for the parties and has perused the record available.

Concededly, after a thorough investigation, respondent No.2 was declared innocent. There is no additional evidence as collected by the investigating agency against respondent No.2 and the statement of Pawan Kumar is just a repetition of the statement made to the police earlier, on the basis of which FIR in question was registered.

In Hardeep Singh's case supra, the Hon'ble Apex Court categorically observed that while summoning a person, as an additional accused the test that has to be applied is one which is more than *prima facie* case, as exercised at the time of framing of charge, but, short of satisfaction to an extent that the evidence, if goes un rebutted would lead to conviction. Further, it was observed that in the absence of such satisfaction, the Court should refrain from exercising the powers under Section 319 of the Code.

Adverting to the facts of the case in hand, respondent No.2 is alleged to be an empty handed. The only lalkara has been attributed to her. Otherwise, also she is none else but the wife of accused Narinder Kumar. Thus, there is every possibility that she is being dragged just by attributing her lalkara. No injury or any other overt act has been ascribed to her.

Thus, this court is of the view that impugned order dated October 28, 2015 passed by learned Additional Sessions Judge, Gurdaspur declining the application under Section 319 of the Code and setting aside of the order dated July 16, 2015 passed by JMIC, Gurdaspur. Thus, declining of the application under Section 319 of the Code is factually as well as legally justified. So, there

is no reason to meddle with the same.

Accordingly, instant petition being devoid of merit, is dismissed.

OCTOBER 04, 2016
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(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned *Yes/No*

Whether Reportable *Yes/No*