

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M No. 18923 of 2016

Date of decision : 28-03-2017

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Parveen Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

\* \* \* \* \*

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

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Present: Mr. Kulbhushan Raheja, Advocate for the petitioner.

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**RITU BAHRI, J.**

Present petition has been filed for quashing the order dated 15.1.2016 (Annexure P-4) passed by the Additional Sessions Judge, Ferozepur vide which the revision petition filed against the order dated 30.9.2015 (Annexure P-3) passed by the Judicial Magistrate Ist Class, Ferozepur was dismissed. Vide order dated 30.9.2015 (Annexure P-3), the application under Section 319 of the Code of Criminal Procedure in FIR No.2 Dated 2.1.2013 Police Station, Mamdot, District Ferozepur under Sections 498-A, 406 IPC for summoning respondents no. 2 & 3 as additional accused was dismissed.

An application Ex. P-2 was made by the complainant

Parveen Kaur and on the basis of this application, the present FIR was

registered against the accused. Perusal of the inquiry report dated 31.12.2012 conducted by DSP (Rural) shows that Ashok Kumar and Gagandeep Kaur were declared innocent and recommendation has been made to lodge FIR only against accused Angrej Singh, Sumitra Rani and Goma Singh. Ashok Kumar and Gagandeep Kaur were not arrayed in the column no.2 of final report filed by the police. The complainant appeared as PW-1 and in her examination in chief did not raise any specific allegation qua the role played by Ashok Kumar and Gagandeep Kaur in the entire episode. Ashok Kumar and Gagandeep Kaur were residing separately and they were found innocent.

Counsel for the petitioner has vehemently argued that though Ashok Kumar and Gagandeep Kaur were not staying in the matrimonial house with the complainant but they were fully involved in the commission of offence. Ashok Kumar being a police constable was influential. The police filed challan against Angrej Singh, his father Goma Singh and mother Sumitra Rani but Ashok Kumar and Gagandeep Kaur were not challaned as Ashok Kumar being the police employee managed the investigating agency.

The marriage of the complainant was solemnised on 17.2.2012 and the allegation in the complaint (Annexure P-1) was that there was a demand of a car and in this connection DDR No. 20 dated 8.9.2012 was got recorded in Police Station Jalalabad. After investigation, the police presented a challan against Angrej Singh husband, Goma Singh father-in-law and Sumitra Rani mother-in-law. Accused Ashok Kumar and Gagandeep Kaur were not staying in the matrimonial house and this was the reason for which even the FIR was

not being registered against them. It is not the case of the petitioner that any application for further investigation was made by them after presentation of challan. Mere oral deposition of the complainant while appearing as PW-1 would not be sufficient to summon the accused under Section 319 Cr.P.C. All of them were staying separately. They had a separate matrimonial house. Hence the application was rightly dismissed by both the Courts as there was no prima facie evidence to summon the accused. As per Hon'ble Supreme Court's judgment in the case of *Hardeep Singh vs. State of Punjab and others, 2014 (1) RCR (Criminal) 623*, *the person not named in the FIR or a person though named in the FIR but has not been charge sheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C provided from the evidence it appears that such person can be tried along with the accused already facing trial. It has further been observed in this judgment in paragraphs 102, 103 and 104 as under:*

102. In Suman v. State of Rajasthan & Anr., AIR 2010 SC 518, a two- Judge Bench of this Court observed that there is nothing in the language of this sub-section from which it can be inferred that a person who is named in the FIR or complaint, but against whom charge- sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence, the court finds that such person has committed an offence for which he could be tried together with the other accused. In Lal Suraj (supra), a two-Judge

Bench held that there is no dispute with the legal proposition that even if a person had not been charge-sheeted, he may come within the purview of the description of such a person as contained in [Section 319](#) Cr.P.C. A similar view had been taken in Lok Ram (Supra), wherein it was held that a person, though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.

103. Even the Constitution Bench in Dharam Pal (CB) has held that the Sessions Court can also exercise its original jurisdiction and summon a person as an accused in case his name appears in Column 2 of the chargesheet, once the case had been committed to it. It means that a person whose name does not appear even in the FIR or in the chargesheet or whose name appears in the FIR and not in the main part of the chargesheet but in Column 2 and has not been summoned as an accused in exercise of the powers under [Section 193](#) Cr.P.C. can still be summoned by the court, provided the court is satisfied that the conditions provided in the said statutory provisions stand fulfilled.

104. However, there is a great difference with regard to a person who has been discharged. A person who has been discharged stands on a different footing

than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation; the court had come to the conclusion that there is not even a prima facie case to proceed against such person. Generally, the stage of evidence in trial is merely proving the material collected during investigation and therefore, there is not much change as regards the material existing against the person so discharged. Therefore, there must exist compelling circumstances to exercise such power. The Court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with [Section 398 Cr.P.C.](#) without resorting to the provision of [Section 319 Cr.P.C.](#) directly.

In the facts of the present case, since two accused were having a separate matrimonial house and moreover even the FIR was not registered against them, hence the application has been rightly dismissed by both the Courts below. There is no irregularity or illegality in the judgements of the Courts below that warrants interference of this Court.

In view of all that has been discussed above, present petition is dismissed.

28-03-2017

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( RITU BAHRI )  
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No