

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

-.-

Crl. Misc. M 35375 of 2015
Date of decision: 16.05.2017

Harchand Singh and another

..... Petitioners

Versus

State of Punjab and another

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Ashok Goel, Advocate
for the petitioners

Mr. Mikhail Kad, AAG, Punjab

Mr. M.P.S. Mann, Advocate
for respondent No. 2

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Rekha Mittal, J. (Oral)

The present petition directs challenge against orders dated 02.09.2014 (Annexure P8) passed by the Judicial Magistrate Ist Class, Samana and dated 20.07.2015 (Annexure P11) by the Additional Sessions Judge, Patiala whereby the petitioners have been summoned as additional accused in FIR No. 68 dated 31.08.2012 for offence punishable under Sections 323, 406, 498-A and 506 of the Indian Penal Code (in short, IPC) registered at Police Station Ghagga, District Patiala by the trial Court and the order passed by the trial Court has been affirmed in revision.

The sole submission made by Counsel for the petitioners is that the observations recorded by the trial Court in para 2 of the impugned order

to the effect that a prima facie case is made out against the accused Harchand Singh and Amar Kaur under Sections 323, 406, 498-A and 506 IPC are not sufficient to satisfy the test laid down by Hon'ble the Supreme Court in Constitution Bench judgment ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92***. It is further submitted that at the stage of summoning the additional accused, the Court can take into consideration only the evidence adduced during inquiry or trial and nothing else.

Counsel representing respondent No. 2/complainant has supported the impugned order with the submission that the investigating agency has not assigned any reason for exonerating the petitioners despite the complainant having raised specific allegations against them.

Counsel for the petitioners, in reply, has submitted that in an inquiry conducted by DSP Patran, it was concluded that Jaswinder Kaur and Sukhwinder Singh are living separately from his parents. Jaswinder Kaur is not having cordial relation with her husband due to which they are always in a quarrelsome mood because Sukhwinder always raises new demands of money and due to his demands being not satisfied, he gave beatings to Jaswinder Kaur.

I have heard counsel for the parties and perused the paper book particularly the orders impugned.

Before advertng to the submissions made by Counsel for the parties, it is appropriate to extract relevant observations of the trial Court recorded in para 2 of the impugned order, quoted thus:-

“.....Allegations have been levelled by the complainant against aforesaid accused also. In the

inquiry they have been left and police reported that only accused Sukhwinder Singh has been found to have committed the offence. As far as father-in-law and mother-in-law of the complainant is concerned as they are residing at same place and the complainant has leveled allegations against them before the police as well as this Court hence is satisfied that there is a prime facie case made out against accused Harchand Singh and Amar kaur under Section 323, 406, 498-A and 506 IPC.”

Perusal of the aforesaid extract leaves no manner of doubt that the trial Court recorded its satisfaction to the extent that there is a prima facie case against Harchand Singh and Amar Kaur under Sections 323, 406, 498-A and 506 IPC. Hon'ble the Supreme Court in authoritative enunciation of law laid down in ***Hardeep Singh's*** case (supra) while answering question No.IV *“Whether the power under Section 319(1) Cr.P.C. can be exercised only if the Court is satisfied that the accused summoned will in all likelihood be convicted?”*, has held, quoted thus:-

“we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. 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. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C.”

The aforesaid extract makes it evident that for summoning an additional accused, there must be material on record showing something more than a prima facie case though it may not be sufficient to record conviction of the accused even if it remains unrebutted. The order passed by the trial Court does not make reference to the settled position in law much less examining the case in the light of ratio laid down in ***Hardeep Singh's*** case (supra). Even the revisional Court did not bother to examine the aforesaid judgement while putting its seal on the order passed by the trial Court. That being so, the orders impugned cannot be allowed to sustain and liable to be set aside.

For the foregoing reasons, the petition is allowed, the impugned orders are set aside and the matter is remitted to the trial Court for decision of the application afresh, in accordance with law, but after taking into consideration the ratio laid down in ***Hardeep Singh's*** case (supra). It is, however, clarified that nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case nor the petitioners shall be entitled to an opportunity of being heard at the time of disposal of application under section 319 Cr.P.C.

(Rekha Mittal)
Judge

May 16, 2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No