

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

(1)

CRM No.M-36708 of 2016 (O&M)

Bhupinder Kaur

...Petitioner

VERSUS

State of Punjab and another

...Respondents

(2)

CRM No.M-1811 of 2017 (O&M)

Major Singh

...Petitioner

VERSUS

State of Punjab and another

...Respondents

Date of Decision: December 01, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.B.P.S.Virk, Advocate
for the petitioners.

Mr.Ayush Sarna, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Sherry K. Singla, Advocate
for respondent No.2.

INDERJIT SINGH, J.

This order shall dispose of both the above-mentioned connected
cases as the point for determination in both the cases is the same.

The above-stated petitions have been filed by petitioners under

Section 482 Cr.P.C. for quashing the order dated 20.11.2015 passed by learned Judicial Magistrate Ist Class, Nabha, vide which the petitioners were summoned as additional accused under Section 319 Cr.P.C. and also for quashing the judgment dated 26.02.2016 passed by learned Addl. Sessions Judge, Patiala, vide which the revision filed by the petitioners was dismissed along with all consequential proceedings including order dated 08.09.2016 passed by learned JMIC, Nabha.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petitions.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

At the time of arguments, it is argued that FIR has been registered by co-accused against other co-accused. During investigation, complainant PW-1 Nahar Singh S/o Kartar Singh gave a complaint giving different version. Admittedly, in the FIR, the present petitioners Bhupinder Kaur and Manoj Singh are not named nor any allegation has been levelled against them. However, they have been named in the complaint filed by the complainant during investigation. It is admitted at the time of arguments that earlier challan was presented and then supplementary challan was also presented but the present petitioners were not even shown in column No.2 nor they have been challaned. During the pendency of the proceedings, an application under Section 319 Cr.P.C. was filed for summoning Bhinder Kaur @ Bhupinder Kaur, Hakam Singh, Major Singh and Nahar Singh s/o Chand Singh as additional accused. Hakam Singh has already died. Nahar Singh has not filed any revision petition.

Further, Bhupinder Kaur and Major Singh filed these petitions

for quashing the summoning order.

Learned Magistrate summoned present petitioners as additional accused vide impugned order dated 20.11.2015. A revision was filed by the petitioner and learned Addl. Sessions Judge, Patiala, dismissed the revision petition vide impugned judgment dated 26.02.2016. Aggrieved from the above-said order and judgment, present petition has been filed.

I have gone through the statement of PW-1 Nahar Singh s/o Kartar Singh, complainant. As per his statement, Nahar Singh s/o Chand Singh and Bharpur Singh are the main accused. The only allegation against Bhupinder Kaur is that she also accompanied them. Similar, is the case with Major Singh. The amount was demanded by Harjinder Singh and he executed a pronote for sum ₹5,80,000/- in favour of the complainant. Harjinder Singh assured him to return remaining amount within few days. The allegation against Major Singh is that he stood surety.

From the perusal of the statement of complainant given in the Court, it is clear that deal was done with Harjinder Singh at the instance of Nahar Singh accused and Harjinder Singh executed pronote of ₹5,80,000/- and also promised to pay the remaining amount, which itself shows that inducement was by Harjinder Singh and he has wrongly gained from cheating and complainant has suffered wrongful loss. There is no inducement by the present petitioners to part with the money.

From the record, it also looks that wife of Harjinder Singh has been implicated only with the purpose to put pressure upon the main accused. Similarly, by standing surety for payment of amount, does not constitute an offence. Even if it is taken that Major Singh stood surety for payment of the money, even then, he is only liable for civil action i.e. to pay

the amount of guarantee.

In view of the above facts, I find that it does not appear to the Court that the present petitioners are also involved in the commission of the offence. The standard of proof for summoning additional accused is some what more than prima facie case.

In the facts and circumstances of the present case and from the evidence on record, I find that the Courts below have not appreciated the evidence in right perspective while summoning the petitioners as additional accused.

Therefore, finding merit in both the petitions, the same are allowed. The order dated 20.11.2015 passed by learned JMIC, Nabha, judgment dated 26.02.2016 passed by learned Addl. Sessions Judge, Patiala and the order dated 08.09.2016 passed by learned JMIC, Nabha, framing the charges along with all subsequent proceedings qua the petitioners, are set aside.

December 01, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No