

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

CRM-M No.36918 of 2014

Date of decision: 2nd November, 2017

Parkash Singh and another

... Petitioners

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. G.S. Punia, Senior Advocate with
Mr. P.S. Punia, Advocate for the petitioners.

Mr. Karambir Singh, Asstt. Advocate General, Punjab
for respondent No.1/State.

Mr. P.S. Ahluwalia, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

Through this order shall stand disposed off a petition preferred by petitioners Parkash Singh and Avtar Singh under Section 482 Cr.P.C. seeking quashing of an order dated 16.10.2014 (Annexure P1) passed by the learned Additional Sessions Judge, Patiala dismissing the criminal revision and for quashing of an earlier order dated 04.08.2014 (Annexure P2) passed by the learned Judicial Magistrate 1st Class, Patiala whereby the petitioner has been ordered to be summoned invoking the provisions of Section 319 Cr.P.C.

Heard Mr. G.S. Punia, Senior Advocate assisted by Mr. P.S. Punia, Advocate for the petitioners; Mr. Karambir Singh, Assistant Advocate General, Punjab representing respondent No.1/State; Mr.P.S.

Ahluwalia, Advocate on behalf of respondent No.2 and perused the records of the case.

The brief facts of the case are that an FIR bearing No.175 dated 17.11.2009 was registered under Sections 325/323/341/506/201/34 IPC at Police Station Julkan on the statement of one Karam Singh who happens to be proforma respondent No.2. In his statement, Karam Singh stated that on 29.07.2009 around 1.00 p.m. while he was coming back from his fields to his house, near the cremation ground of Harijans, Joginder Singh and Ram Singh both sons of Ram Sarup and both armed with Spades along with the present petitioner Parkash Singh son of Ram Sarup also armed with Spade, petitioner Avtar Singh and Munshi Ram both sons of Joginder Singh were standing in their fields. On raising of lalkara by Joginder Singh that the complainant be taught a lesson for passing through their *Pahi* (passage) Joginder Singh is alleged to have given a blow of Spade hitting complainant's head, Munshi Ram and Avtar Singh caught hold of the complainant from neck and tried to squeeze it and pinned him on the ground and while the complainant was lying on the ground Parkash Singh and Ram Singh gave blows of Spade and fist blows leading to injuries on the head, mouth, neck and left hand of the complainant. The motive behind the occurrence is a dispute over some joint electricity connection on which the two sides were jointly using the tubewell.

Learned counsel for the petitioners Mr. G.S. Punia, Senior Advocate assisted by Mr. P.S. Punia, Advocate has sought to place

reliance on '**Brijendra Singh & others v. State of Rajasthan**' 2017(3) RCR (Criminal) 374 and '**Hardeep Singh v. State of Punjab & others**' 2008(4) RCR (Criminal) 947, to hammer home the point that there is no such evidence falling within the ambit which could necessitate exercise of powers under Section 319 Cr.P.C. and that the petitioners have been found innocent during the police investigations and inquiry and thus, cannot be summoned by any means.

The same is sought to be opposed with much vehemence by Mr. P.S. Ahluwalia, Advocate representing respondent No.2 by placing reliance on '**Dalip Singh v. State of Punjab**' 1997(4) RCR (Criminal) 58 to bring about his stand that a finding by an investigating officer is not binding on the Court and it is the evidence led before the Court which is of utmost significance and has drawn attention of the Court to the own stand of the petitioners whereby in their cross-version they have admitted their presence, and thus prayed for dismissal of the instant petition.

Appreciating the submissions, the petitioners have invoked jurisdiction of this Court under Section 482 Cr.P.C. for enabling this Court to exercise its inherent powers and which in view of the settled proposition of law, as has been laid down in '**State of Haryana and others v. Ch.Bhajan Lal and others**' 1991(1) RCR (Criminal) 383, are to be used only in exceptional cases as a rarity to meet the ends of justice. The very document first in point of time is statement of the complainant which has been relied upon even by the petitioners in their contentions whereby both the petitioners along with others have been named to be the

persons who have waylaid him and assaulted him in the process over a dispute between them. Since the FIR (Annexure P9) is a document first in point of time, certainly carries sanctity and which is corroborated from the evidence by way of medico legal report (Annexure P8) whereby in all there are six injuries of different nature on different parts of the body, as have been stated by learned counsel for the complainant/victim. Furthermore, any finding recorded by an investigating officer which is sought to be relied upon by the petitioners by way of inquiry (Annexure P3), as has been contended by Mr.Ahluwalia and is otherwise well settled proposition of law, is not binding on the Court and in view of the undisputed proposition of law laid down in **Hardip Singh's case** (ibid), it is the evidence collected that needs to be taken into account. It is not disputed that powers under Section 319 Cr.P.C. can be exercised by the trial Court at any stage during the trial or before conclusion of the trial to summon any person as an accused and is even enabling the Court to summon a person not arraigned as an accused after evidence to that effect comes forth which inspires confidence in the Court, and therefore, the evidence collected during the investigations, at the time of trial including the statement of the complainant (Annexure P4) relied upon by the petitioner side, is well corroborated by the medical evidence and therefore, are sufficient enough to prima-facie bear out role of the petitioners and their co-accused in commission of the offence against the victim. Even the initial complaints placed on the file of lower Court records have made out specific allegations against the petitioners. The

courts below have given a well reasoned finding to this effect as is apparent from the orders passed by the learned Judicial Magistrate 1st Class and even in the impugned orders where the Court has categorically held that the complainant has mentioned presence and participation of the petitioners in the occurrence, are matters of material consequence. In the light of what has come before this Court during the investigations, at the trial and which evidence is corroborative of each other, impels this Court to hold that there appears to be no illegality in the findings recorded by the two courts below, which needs to be upheld. No cause for showing indulgence by exercise of powers under Section 482 Cr.P.C. is made out. The petition being wholly without any merit stands dismissed. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

November 2, 2017

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No