

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

CRM-M-3909 of 2017 (O&M)

Date of Decision: 07.02.2017

Joginder Singh & others

... Petitioners

Versus

State of Punjab

... Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Abhimanyu Kalsy, legal aid counsel for the petitioners.

....

TEJINDER SINGH DHINDSA.J

Petitioners are accused in FIR No.29, dated 13.03.2010, registered under Sections 323/506/148/149 IPC at Police Station Sultanwind (Tarn Taran), District Amritsar.

In terms of order dated 30.09.2015 (Annexure P-2), an application under Section 216 Cr.P.C. moved by the prosecution for adding charge under Section 452 IPC has been allowed by the Judicial Magistrate 1st Class, Tarn Taran. Revision preferred by the petitioners has been dismissed by the learned Additional Sessions Judge, Tarn Taran vide order dated 20.09.2016 (Annexure P-3).

Instant petition has been filed under Section 482 Cr.P.C. seeking quashing of afore noticed two orders passed by the trial Court as also the revisional Court at Annexures P-2 and P-3 respectively.

Counsel appearing for the petitioners would submit that the application under Section 216 Cr.P.C. to add the charge for commission of offence punishable under Section 452 IPC has been moved by the

prosecution upon recording of the statements of PW1 Amarjit Kaur and PW2 Puran Singh. It is argued that acceptance of such application under Section 216 IPC has caused prejudice to the petitioners/accused as PW1 and PW2 are close relatives of the complainant and as such would be construed as interested witnesses. No credibility should have been lent to their statements. It is also argued that a similar application filed earlier in point of time had been withdrawn. Counsel would also lay emphasis on the fact that the Investigating Agency had found that the occurrence/quarrel had taken place outside the house of the complainant and as such there was no occasion for adding the charge under Section 452 IPC.

Counsel for the petitioners has been heard at length.

Perusal of the order dated 30.09.2015 passed by the trial Court at Annexure P-2 reveals that the complainant in his statement given before the police has categorically stated that the accused persons had entered into his house and had attacked him. Amarjit Kaur and Puran Singh, who are stated to be the eye witnesses to the occurrence have deposed while appearing as PW1 and PW2 that the accused party had forcibly and illegally entered into the house of the complainant and thereupon the occurrence had taken place.

Counsel has also not been able to rebut the factual aspect that has been noticed by the revisional Court that after adding of charge under Section 452 IPC, evidence has already been led and examination of the accused under Section 313 Cr.P.C. is complete and now the matter is at the stage of leading defence evidence by the accused (present petitioners).

Under such circumstances, no prejudice would be caused to the present petitioners/accused party as consequent to the adding of charge

under Section 452 IPC, they would get a chance to cross examine all the prosecution witnesses including Amarjit Kaur PW1 and Puran Singh PW2. Petitioners would also have a right in law to lead defence evidence to demolish the prosecution version including the alleged commission of offence under Section 452 IPC i.e. the charge that has been added.

This Court does not find any basis that would warrant interference in the impugned orders.

The present petition, accordingly, is dismissed.

07.02.2017

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |