

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

CRR No.138 of 2013 (O&M)

Date of Decision: 13.01.2017

Manohar Singh

....Petitioner

Vs.

State of Punjab and others

....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr. M.S. Sachdev, Advocate
for the petitioner.

Mr. D.S. Virk, AAG, Punjab

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

Amol Rattan Singh, J (Oral)

By this petition, the complainant has impugned the order of the learned trial Court, by which the application filed under Section 319 Cr.P.C. qua summoning respondent no.2 herein, has been dismissed, while allowing the application to the extent of summoning of one Harminder Singh @ Kandy.

It is contended by Mr. Sachdev, learned counsel for the petitioner, that though respondent no.2, Kulwinder Kaur, was not named in the FIR, however, that very day, a supplementary statement was made by the petitioner-complainant himself and thereafter, at the time of prosecution evidence, the petitioner, as also one Sita Rani (PW-4), testified to the effect that Kulwinder Kaur had actually been present on the spot and was exhorting the other accused not to spare the deceased, Mohinder Singh.

It was seen by the trial Court that the statement of the petitioner

in his testimony, had in fact been that Kulwinder Kaur had handed over the *Bahi* by which Mohinder Singh was attacked by her sons Harminder Singh and Lakhvir .

As per PW-4, Sita Rani, Kulwinder Kaur gave fist blows and injuries to Mohinder Singh. However, the learned trial Court found that in the statement of the petitioner-complainant, made before the police, Ex.PE, (which in fact is stated to be the FIR itself), the role of Kulwinder Kaur was not given.

Similarly, as regards PW4, Sita Rani, the trial Court noticed that when she was confronted with her statement to the police, Ex.PW, regarding presence of Kulwinder Kaur on the spot, it was found that she had not stated so.

Yet further, it was noticed that no injury actually had been attributed to Kulwinder Kaur.

On the aforesaid findings, the application of the petitioner, as regards seeking summoning of Kulwinder Kaur as an accused, was dismissed, as already noticed.

Mr. Sachdev further submits, in response to the order dated 22.07.2016, that a petition challenging dismissal of an application filed under Section 319 Cr.P.C. would be maintainable even after the trial is over, as the said issue stands settled in **Harjinder Singh v. State of Haryana and others**, 2013 (1) RCR (CrI.) 1038 and **Arshida V. State of Haryana and others**, 2014 (1) RCR (CrI.) 946.

On merits, he has reiterated what has been noticed above to the effect of the testimonies of the petitioner and PW4.

Though Mr. Ahluwalia, learned counsel for the complainant, has submitted that the judgment of this Court in Harjinder Singhs' and Arshidas' cases (supra) would not apply to the circumstances of the present case, however, that question is not considered necessary to be gone into, as I am not in agreement with learned counsel for the petitioner even on merits.

Mr. Sachdev further submits that summoning of a person sought to be arraigned as an accused, by filing an application under Section 319 Cr.P.C. is no longer limited to a situation where the trial Court is of the opinion that the person sought to be so arraigned would eventually be convicted, as in **Hardeep Singh Vs. State of Punjab and others**, 2014 (1) RCR (Cr1.) 623, it is now well settled by the Supreme Court that it is not necessary that the trial Court should be of the opinion that the person so arraigned would eventually be convicted. The Court should only form an opinion that there is more than simply a prima facie case made out against the said person.

Having considered the aforesaid argument also, in the opinion of this Court, as regards respondent Kulwinder Kaur, she not having been named in the FIR at the initial stage and her subsequent naming actually amounted to an improvement made in the original statement, there being discrepancies in the testimonies of the complainant as PW3 and Sita Rani, PW-4 , with Sita Rani even not whispering that the *Bahi* had been handed over by Kulwinder Kaur to her sons, whereas the petitioners' statement was specifically to that effect.

Hence, I see no error in the order of the learned trial Court dismissing the application of the petitioner qua summoning of Kulwinder

Kaur as an accused, in view also of the fact that neither of the two aforesaid witnesses attributed any injuries specifically to Kulwinder Kaur. That apart, as already said, the discrepancies in the testimonies of the petitioner and PW-4, are seen to be the result of an afterthought, to simply involve another person of the family of the accused, she not having been named in the original statement of the complainant, that formed the basis of the FIR.

Hence , in the opinion of this Court, an improvement made to the original statement would, in the circumstances, be simply roping in another family member of the accused.

Consequently, finding no merit in the revision petition, it is dismissed.

January 13, 2017
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking:	Yes
Whether reportable :	Yes