

CRR-2585-2015 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2585-2015 (O&M)

Date of Decision: May 10, 2017

Shamsher Singh & another

...Petitioners

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ajay Pal Singh, Advocate
for the petitioners.

Ms. Jashanpreet Singh, Assistant Advocate General, Punjab.

Mr. P.P.S. Duggal, Advocate
for complainant-respondent No.2.

AUGUSTINE GEORGE MASIH, J. (Oral):

CRM-32419-2015

Prayer in this application is for impleading Kulwant Singh son of Darshan Singh, as respondent No.2 in the revision petition, who is complainant in the FIR.

For the reasons set out in the application, the same is allowed. Kulwant Singh son of Darshan Singh is impleaded as respondent No.2 in the revision petition.

CRR-2585-2015

This revision petition has been filed challenging the order dated 10.06.2015 passed by the Judicial Magistrate 1st Class, Fazilka, whereby, petitioners have been summoned to face trial on an application filed by the

prosecution under Section 319 of Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.').

It is the contention of the learned counsel for the petitioners that except for naming the petitioners in the FIR, no overt act has been attributed to them. As a matter of fact, after the investigation, challan which has been submitted by the investigating agency, petitioners were not found to be involved in the commission of any offence and therefore, have been placed in Column No.2. He contends that as per the judgment passed by the Hon'ble Supreme Court in Hardeep Singh Vs. State of Punjab & others 2014 (1) R.C.R. (Criminal) 623, there must be some additional material available with the Court that may be brought on record justifying the summoning of the petitioners as additional accused, which is absent in the present case. In support of this contention, he has referred to the statement of complainant-Kulwant Singh, dated 09.04.2014 (Annexure P-5). He, thus, contends that the impugned order dated 10.06.2015 passed by the Judicial Magistrate 1st Class, Fazilka, cannot sustain and deserves to be set aside.

On the other hand, learned counsel for the State as also counsel for the complainant submit that the same judgment on which reliance has been placed by the counsel for the petitioners, further states that the requirement for summoning under Section 319 Cr.P.C. is only to the extent where material is available on record for framing the charge which material is sufficient as per the FIR and the statement of the complainant-Kulwant Singh (Annexure P-5), therefore, the impugned order deserves to be sustained.

I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records available on the case file.

Perusal of the FIR would show that except for naming the petitioners Davinder Singh and Sukhwinder Singh, no other overt act has been attributed to them. Similar is the position so far as the statement of PW-1 Kulwant Singh-complainant (Anenxure P-5) in Court, the investigating agency having thoroughly investigated the matter have found the petitioners innocent. There is nothing which can be said to be additional material on record and having been brought on record which would justify the impugned order dated 10.06.2015 passed by the Judicial Magistrate 1st Class, Fazilka.

There can be no dispute with regard to the preposition of law as laid down in *Harpreet Singh's* case (supra), on the basis of which, counsel for the complainant has argued that the material, if sufficient on record for framing the charges, would entitle the Court to summon the accused as additional accused under Section 319 Cr.P.C., but in the present case, this Court is of the opinion that there is not enough material for that purpose as well. Apart from the requirement of the said judgment where it has been mentioned that the application under Section 319 Cr.P.C. is not to be allowed by the Court in routine and mechanical fashion and without having taken into notice the material that have been brought on record justifying the summoning of the petitioners as additional accused. The dictum as laid down by the Hon'ble Supreme Court in *Harpreet Singh's* case (supra)

CRR-2585-2015 (O&M)

having not been complied with, the impugned order dated 10.06.2015 passed by the Judicial Magistrate First Class, Fazilka, cannot sustain and is hereby set aside.

The revision petition stands allowed.

(AUGUSTINE GEORGE MASIH)
JUDGE

May 10, 2017
Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No