

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

**CRR No.1653 of 2016 (O&M)
Date of Decision: January 24, 2017**

Gur Raj Kamal Singh and another

...Petitioners

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.S.Rana, Advocate
for the petitioners.

Mr.K.S.Aulakh, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Yogesh Goel, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Petitioner has filed this revision petition under Section 401 Cr.P.C. against respondents State of Punjab and Bhupinder Singh, challenging the impugned order dated 24.09.2015 passed by learned Judicial Magistrate Ist Class, Ludhiana, vide which application under Section 319 Cr.P.C. filed by Addl. Public Prosecutor was allowed and petitioners along with one Paramjot Singh @ Param Singh were summoned as additional accused to face trial.

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

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

From the record, I find that during the trial, an application under Section 319 Cr.P.C. was filed by the prosecution, in which it is stated that Gurjar Kamal Singh @ Gurkamal Singh, Paramjot Singh @ Param Singh and Reet-Mohinder Kaur @ Ramandeep Kaur have also committed the offence along with accused Jaswinder Kaur @ Binder Kaur. It is also stated in the application that Investigating Officer without any reason has not presented the challan against above said persons. It is also the case of the prosecution that complainant Bhupinder Singh while stepping into witness box, has narrated the entire version of his FIR and further specifically mentioned the names of above-said accused as they have also induced the complainant regarding handing over the amount of ₹8.5 lacs for sending his son abroad and further complainant in his statement has stated that he paid ₹1 lakh to Gurkamal Singh, Param Singh, Ramandeep Kaur nad Binder Kaur @ Jaswinder Kaur at his maternal uncle Gurbachan Singh's house. It is further the case of the prosecution that remaining amount of ₹7.5 lacs was received by Binder Kaur @ Jaswinder Kaur and that amount was handed over to Gurkamal Singh, Param Singh and Ramandeep Kaur.

Learned JMIC, Ludhiana, held that at the time of filing the complaint, the complainant has named the above-said persons but the police did not register the case against said persons. It is also held by learned Magistrate that Bhupinder Singh while stepping into witness box has also specifically stated the names of these persons as they first induced the complainant and thereafter they received an amount of ₹1 lac and thereafter ₹7.5 lacs from the complainant and further there is no improvement in the statement of complainant as he has narrated the exact version as per his

complaint. The Court held that, so in these circumstances when there is no improvement in the statement of complainant, this Court is of the considered opinion that above said persons have also committed the offence along with accused Jaswinder Kaur. The application was allowed and accused Gurjar Kamal Singh @ Gurkamal Singh, Paramjot Singh @ Param Singh and Reet-Mohinder Kaur @ Ramandeep Kaur, were ordered to be summoned for the purpose to face trial.

From the record, I find that the order dated 24.09.2015 passed by learned JMIC, Ludhiana, is incorrect. There are material improvements made by the complainant while appearing in the Court. In the FIR, which was got registered on 29.05.2013, it is nowhere the case of the complainant that ₹1 lac was paid to Gurkamal Singh, Param Singh and Ramandeep Kaur and ₹7.5 lacs was paid to Binder Kaur @ Jaswinder Kaur at his maternal uncle's house in the presence of Sukhdev Singh. In the FIR, the amount was stated to be paid in the year 2008, where the complainant stated that he had given ₹8.5 lacs to aforesaid accused persons. The FIR was got registered after five years of giving money but there was no mention regarding these facts that the accused persons/petitioners which the prosecution now wants to summon, induced the complainant to pay money or amount of ₹7.5 lacs was handed over to Binder Kaur @ Jaswinder Kaur for giving to these persons. There is no averment that ₹1 lac was paid to them. Therefore, complainant Bhupinder Singh while appearing in the Court has made material improvements in his statement.

Learned counsel for the petitioner stated that the statement of present complainant Bhupinder Singh was also recorded under Section 161

respondent No.2 has not denied the fact that FIR was registered on the statement of Bhupinder Singh and the FIR is a corroborative piece of evidence and can also be used for confronting the witness. No reason or explanation has been given that when the written complaint was filed after five years of the occurrence, then why these facts have not been mentioned in the FIR and then what was the reason that these facts are given after two days in the statement recorded under Section 161 Cr.P.C.

It is settled law that persons can be summoned as additional accused if it appears to the Court that the additional accused sought to be summoned are involved in the commission of the offence. The standard of proof for summoning additional accused is more than prima facie case. The Investigating Officer after investigation has found the petitioners as innocent.

At this stage, in view of the FIR as well as the statement of the complainant in the Court, I find that the present petitioners do not appear to be involved in the commission of the offence. The impugned order dated 24.09.2015 passed by learned JMIC, Ludhiana, qua the petitioner is set aside.

Therefore, finding merit in the present petition, the same is allowed.

January 24, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No