

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

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Crl. Revision 3429 of 2015
Date of decision: 22.02.2017

Sukha Singh alias Sukhdev Singh and others *Petitioners*

Versus

State of Punjab and others *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Mukand Gupta, Advocate
for the petitioners

Mr. Mikhail Kad, AAG, Punjab

Mr. Parminder Singh, Advocate
for respondent No. 2

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Rekha Mittal, J.

The present petition directs challenge against order dated 20.05.2015 passed by the Additional Sessions Judge, Tarn Taran whereby Sukha Singh and others have been summoned as additional accused under Section 319 of the Code of Criminal Procedure (in short, 'Cr.P.C.') to face trial for offence punishable under Sections 363, 366-A, 376, 457, 380, 506, 120-B, 148 and 149 of the Indian Penal Code (in short, 'IPC').

The petition qua Sukha Singh, Sona Singh and Kuldeep Singh petitioners No. 1, 2 and 7 respectively was ordered to be dismissed as withdrawn vide order 14.09.2015, whereas notice of motion was issued only qua petitioners No. 3 to 6 namely Kulwinder Kaur, Sarabjit Kaur, Paramjit Kaur and Mahni.

Counsel for the petitioners has submitted that the trial Court in para 4 of the impugned order has mentioned that “*the prosecutrix appeared in the witness box and she specifically named Sukha Singh, Sona Singh, their wives Kulwinder Kaur and Sarabjit Kaur, Paramjit Kaur wife of Laddu, Mahni wife of Dilbag Singh and Kuldeep Singh son of Gajji (D.J.Wala) having committed lurking house trespass on the fateful night and was kidnapped by Gurlal Singh already facing trial and also removed cash and valuables from her home belonging to her parents and then was raped on the side of canal.*” It is argued with vehemence that reading of statement of the prosecutrix would make it apparent that the aforesaid facts noted in the impugned order with regard to naming the petitioners much less attributing any role to them in the crime is contrary to record, therefore, order impugned is the result of non-application of mind and has resulted in miscarriage of justice. For this purpose, counsel has carried me through statement of the prosecutrix recorded on 16.10.2013 Ex.P1, her statement recorded under Section 164 Cr.P.C. Ex.P2/PW2/A and her testimony recorded before the Court during trial on 12.09.2014, 25.09.2014 and 21.10.2014.

Counsel for the State is not in a position to say something with regard to the prosecutrix having named Kulwinder Kaur and others or attributing any role to them in the occurrence on 10.10.2013.

I have heard counsel for the parties, perused the paper book and the original records of the trial Court.

A conjoint reading of the first version given by the prosecutrix Ex.P1, her statement recorded under Section 164 Cr.P.C. Ex.P2/PW2/A and her testimony on oath recorded on 12.09.2014, 25.09.2014 and

21.10.2014, factual findings recorded by the Court below qua the petitioners, pointed out by counsel for the petitioners and reproduced herein-before, are not borne out from the records. It is surprising rather shocking that a judicial Officer of the rank of Additional Sessions Judge has incorrectly recorded that the prosecutrix has named the petitioners in her testimony before the Court. As there is no reference to presence of the petitioners at the time of alleged occurrence on 10.10.2013 nor any role has been attributed to them in the crime, reliance by the trial Court on judgment of the Constitutional bench of Hon'ble the Supreme Court of India ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92*** is highly misplaced. In this view of the matter, the order impugned cannot be allowed to sustain, accordingly set aside qua petitioners No. 3 to 6.

The petition is allowed in the aforesaid terms.

(Rekha Mittal)
Judge

22.02.2017
mohan bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No