

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 4226 of 2015 (O&M)

Date of Decision: 18.03.2017

Hardev Singh

....Petitioner

VERSUS

State of Punjab and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Ashish Sanghi, DAG, Punjab.

Mr. Vivek Thakur, Advocate
for respondents no. 2 to 4.

SURINDER GUPTA, J.(Oral)

This is revision petition against order dated 24.09.2015 passed by Additional District and Sessions Judge, Kapurthala, whereby application filed by prosecution under Section 319 Cr.P.C. to summon respondents no. 2 to 4 as additional accused was dismissed.

2. Learned counsel for revision petitioner and learned State counsel have argued that while declining application, learned trial Court has failed to look into the fact that specific role and injuries were attributed to respondent no. 3-Kuldip Singh and respondent no. 4-Gurdial Singh. While Gurdial Singh was armed with *dang*. Kuldip Singh had caused injuries on the person of petitioner-Hardev Singh with *datar*. At the time of summoning additional accused, the Court had to only see that evidence on record makes out more than a *prima facie* case but the trial Court applied the parameters that evidence on record, if remain, un-rebutted will not entail conviction of respondents no. 2 to 4.

3. Learned counsel for private respondents has argued that no role of respondent no. 3-Randhir Singh has been mentioned either in FIR or even in statement of petitioner-Hardeep Singh, who appeared as PW-1. As per version of the prosecution, respondent no. 3-Kuldip Singh had caused *datar* injuries on the person of petitioner-Hardev Singh while in his medical examination no incised wound was found. There were only multiple abrasions found over back of petitioner-Hardeep Singh, which were declared simple in nature. Respondent no. 2-Kuldip Singh was not attributed any specific injury and this fact was considered by the trial Court while declining application to summon him as additional accused. Even in police investigation, it was found that all the private respondents were not present at the time of occurrence and the superficial injury attributed to additional accused appears to be self-suffered as per opinion of the doctor.

4. On giving a careful thought to submissions of learned counsel for parties, I find that so far as respondent no. 2-Randhir Singh @ Dheera is concerned, there is no allegation against him in the FIR or even in the statement of petitioner, who appeared as PW-1. Learned counsel for the petitioner has fairly conceded that even the presence of respondent no. 2-Randhir Singh @ Dheera at the time of occurrence was not alleged in the FIR. In view of this order passed by learned trial Court declining to summon respondent no. 2-Randhir Singh @ Dheera as additional accused calls for no interference.

5. Learned trial Court while declining to summon Randhir Singh @ Dheera, Kuldip Singh and Gurdial Singh as additional accused has observed as follows:-

“Only one superficial injury i.e. abrasion on the left shoulder of Hardev Singh has been attributed to accused Kuldeep Singh. PW-4 Daljit Singh alleged to have sustained injury on his leg from the 'Dang' of Gurdial Singh. The alleged injury has not been testified by PW-1 Hardev Singh and PW-5 Davinder Singh categorically. Even otherwise, the alleged injuries are superficial injuries. During the course of inquiry, SP(H) vide his report dated 12.09.2012 found the additional accused sought to be summoned innocent on the pretext that said accused were not present at the time of alleged occurrence. The alleged superficial injuries attributed to additional accused seems to implicate the accused Kuldeep Singh and Gurdial Singh in alleged crime. There is nothing on record to suggest that accused Randhir Singh @ Dheera abetted the commission of alleged crime since admittedly he was not present at the time of alleged occurrence.

Substantial evidence has not come on record qua the involvement of additional accused in alleged crime. There seems to be no fair chances of conviction of additional accused Randhir Singh @ Dheera, Kuldeep Singh and Gurdial Singh if the evidence adduced on record qua them remain un-rebutted on record. Earlier application to the same effect against additional accused has already been dismissed vide order dated 02.06.2015. As such, there exists no sufficient grounds to proceed against additional accused.”

6. Learned counsel for the petitioner has not been able to make

out as to what more material has come on record after order dated 02.06.2015 calling for summoning of additional accused to face trial. Even copy of order dated 02.06.2015 has not been placed on file to make as to on what ground earlier application was dismissed and what further evidence was brought on record creating new circumstances to consider second application filed by the petitioner under Section 319 Cr.P.C.

7. Learned counsel for the petitioner has referred the statement of PW-1, which was recorded on 18.05.2015 i.e. before passing of earlier order dated 02.06.2015. In that statement, the petitioner has attributed respondent no. 3-Kuldip Singh *datar* injury on backside of his shoulder. Though, statements of PW-4 Daljit Singh, another injured and PW-5 Davinder Singh were recorded after passing of order dated 02.06.2015 but the same have neither been placed on file nor relied or referred during course of arguments by learned counsel for the petitioner.

8. It is apparent that injury over 'left scapular region' of Kuldip Singh was having multiple abrasions for which x-ray and orthopedic opinion was sought. It has been admitted that said injury was found to be caused by blunt weapon and was declared simple in nature. It was otherwise a superficial injury and as per version in FIR and statement of petitioner as PW-1, it was caused by giving *datar* blow on backside of shoulder, as such, does not correspond with injury found on the person of petitioner. Respondent no. 4-Gurdial Singh has also not been attributed any specific injury and general allegations were levelled against him that he alongwith Sohan Singh and Narinder Singh caused injuries on his forehead, left arm, left shoulder, right arm and both knees. There were in all five injuries on the person of Daljit Singh son of Gurbax Singh (nephew of the petitioner)

out of which three were abrasions, one injury on forehead was lacerated wound which admittedly was not attributed to any of respondents. It is admitted that it is a cross-version case and four accused are already facing trial for causing injuries on the person of petitioner, his son Davinder Singh and nephew Daljit Singh. As already discussed presence of Randhir Singh @ Dheera was admittedly neither alleged nor made out at the spot from perusal of FIR and testimony of petitioner. So far as injuries attributed to respondent no. 3-Kuldip Singh is concerned, the same does not correspond with injury on the person of Daljit Singh and no specific injury was attributed to respondent no. 4-Gurdial Singh. It appears that intention of petitioner is to implicate as many persons of opposite party as possible for about ten injuries on the person of complainant party, as mentioned in MLR, out of which six are abrasions and two are complain of pain. No doubt trial Court at the stage of summoning additional accused has not looked into as to whether evidence produced by the petitioner is sufficient to record conviction of additional accused but at the same time it has to look into the whole circumstances and intention of the petitioner. On perusal of paper-book and order of trial Court, I find no factual infirmity therein calling for any interference. Learned trial Court has rightly declined to summon Randhir Singh @ Dheera, Kuldip Singh and Gurdial Singh as additional accused. This revision petition has no merit and the same is dismissed.

March 18, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No