

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

Crl. Misc. M-15464 of 2018 (O&M)
Date of Decision: July 10, 2018

Shinda Ram

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vijay Rana, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

1. The petitioner herein seeks quashing of impugned order dated 12.03.2018 passed by the Additional Sessions Judge, Ludhiana, by which the application filed by the petitioner under Section 319 of Code of Criminal Procedure (for short 'the Cr.P.C.') for summoning respondents No.2 and 3 as additional accused has been dismissed.

2. In short, FIR No.78 dated 29.04.2010 came to be registered under Sections 323, 452, 379, 395, 307, 427, 436, 354, 447, 511, 148, 149 of Indian Penal Code at Police Station Salem Tabri, Ludhiana (Annexure P-1/T) by the petitioner stating therein that Binta son of Ram Asra, Romi son of Malkiat, Toni s/o Malkiat, Bhima son of Ram Asra, Gursewak Singh Fauji, Des Raj son of Jagar Ram, Jassa son of Des Raj and other unidentified persons entered the plot of the complainant, armed with

gandasies, kirpans and dangs and took away his buffalos and set fire to the dung cakes lying on the plot. They were attacked with deadly weapons and injuries were caused. These persons also entered the house of the complainant and damaged the fridge, TV, bed, almirah and other articles and also took away cash of ₹ 50 thousand and gold ornaments, while also submitting that they tried to outrage the modesty of Manjeet Kaur. After investigation, challan was presented against most of the accused under Sections 323, 452, 379, 395, 427, 336, 454, 447, 511, 148 of Indian Penal Code (Annexure P-2/T), however, accused Gursewak Singh Fauji has been found innocent, while accused Rahu Dass @ Bhima was found to be absconding and it was decided to initiate PO proceedings against him. It was also decided that a supplementary challan would be presented, after his arrest.

3. The prosecution, thereafter, filed an application under Section 319 Cr.P.C. for summoning Gursewak Singh Fauji and Rahu Dass @ Bhima as additional accused to face trial, which application was dismissed by the Additional Sessions Judge, Ludhiana by an order dated 19.01.2015. It was held that the matter had been thoroughly investigated and no role has been attributed to Gursewak Singh Fauji herein. Moreover, it was found that he was not present at the spot. As regards as respondent No.3 Rahu Dass @ Bhima is concerned, the Additional Sessions Judge, while taking note of the fact that the said respondent had been declared as PO and that the supplementary challan against the said respondent is yet to be filed, held that no ground is made out to summon him as an additional accused under Section 319 Cr.P.C. Subsequent thereto, the second application was filed

seeking to summon the said two persons namely Gursewak Singh Fauji and Rahu Dass @ Bhima as additional accused, which again came to be dismissed by the impugned order. Aggrieved against the said order, the instant petition has been filed.

4. Learned counsel appearing on behalf of the petitioner contends that a specific role has been attributed to both Gursewak Singh Fauji and Rahu Dass @ Bhima. The trial court has erred in not summoning the said persons as additional accused to face the trial. It is argued that both the accused are named in the FIR as well as in the statement of the complainant recorded under Section 161 Cr.P.C. and therefore, the application ought to have been allowed.

5. I have heard learned counsel for the petitioner and have also perused the impugned order dated 12.03.2018.

6. The Additional Sessions Judge has rightly declined to summon Gursewak Singh Fauji and Rahu Dass @ Bhima as an additional accused to face the trial. It is being noted that the similar application had earlier been filed seeking to summon Gursewak Singh Fauji and the same stood dismissed by the then Additional Sessions Judge by an order dated 19.01.2015 and subsequent thereto, there was nothing on the record to show that there was any changed circumstance or evidence available on the file to warrant summoning him. In the absence of any additional evidence, it was held that the second application would not lie on the same set of evidence and the said order could not be reviewed. While taking note of the application to summon Rahu Dass @ Bhima, it was held that the application qua him would be maintainable since earlier application had not been

dismissed on merits qua him. However, Additional Sessions Judge took note of the file containing statement of the complainant and the evidence available and took note of the fact that no overt act had been attributed to him and the said respondent was only accompanying the accused at the time of the occurrence. The supplementary challan as presented on 17.12.2010 had found Rahu Dass @ Bhima as innocent during its inquiry. Again taking note of the fact that there was no evidence available on the record other than the initial statement made, which had duly been enquired into, no ground was made out for allowing the said application. The impugned order so passed is in conformity with the judgment as rendered in **Hardeep Singh v. State of Punjab, (2014) 3 SCC 92.**

7. In view of the foregoing discussion, the instant petition is hereby dismissed, being devoid of any merits.

July 10, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No