

CRM-M-2247 of 2018

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

CRM-M-2247 of 2018
Date of Decision: 06.12.2018

Usha Rani and another

....Petitioners

Versus

State of Punjab

....Respondent

CRM-M-13619 of 2018

Ram Chand @ Ram Kumar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Vishal Deep Goyal, Advocate, for the petitioners.
Mr. Davinder Bir Singh, DAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

By this common judgment, I shall dispose of above titled two petitions for quashing order dated 05.08.2017 (Annexure P-5) passed by learned Additional Sessions Judge, Ludhiana, summoning the petitioners to face trial in case FIR No.91 dated 25.07.2016 registered under Sections 302, 307, 447, 506, 511, 120-B, 148, 149 IPC and Section 25 & 27 of the Arms Act at Police Station Dehlon, District Ludhiana.

Briefly, complainant-Sharda Bansal lodged aforesaid FIR at Police Station Dehlon, District Police Commissionerate falling in District

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Ludhiana against eight accused namely, Raj Kumar, Ram Kumar, Anita wife of Raj Kumar, Darshana Devi, Abhishek, Usha Rani, Shubham and Kuldeep Singh on the allegations that in the day time of 25.07.2016, they tried to forcibly take possession of their land and raised construction thereon. In that process, accused Raj Kumar fired two shots at her husband Dharampal and their servant Sanjay. Co-accused Anita and Usha Rani caught hold of Sanjay and remaining accused gave kick blows to them. As a result thereof, Dharampal was declared brought dead by the medical officer. During investigation, six accused namely, Ram Kumar, Anita, Abhishek, Darshana Devi, Usha Rani and Shubham were found innocent. Therefore, final report under Section 173(2) Cr.P.C. was filed only against two persons, namely, Raj Kumar and Kuldeep Singh, by placing other six in column No.2.

Since case was triable by the Court of Sessions, therefore, learned Magistrate committed the same to the Court of Sessions.

Before framing charge, complainant-side moved an application under Sections 190, 239 and 240 Cr.P.C. for summoning aforesaid six accused, alleging that they were wrongly declared as such by the police and were liable to face trial.

Trial Court, after hearing the parties, allowed the said application of the complainant vide impugned order dated 05.08.2017 (Annexure P-5) and consequently ordered for summoning of the five persons namely, Ram Kumar, Anita, Abhishek, Darshana Devi and Usha Rani as additional accused out of total six persons declared innocent by the police.

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Learned counsel for the petitioner contends that Sections 190, 239 and 240 Cr.P.C. deal with the powers of Magistrate. The Court of Sessions is not empowered to summon a persons as additional accused exercising its power under the aforesaid Sections. Sessions Court was required to obtain proper application from the complainant mentioning correct Sections therein before passing the impugned order.

On the other hand, learned State counsel vehemently opposing the above submissions of learned counsel for the petitioners, contends that mentioning of wrong Sections in the application is only a typographical mistake, which should not be given much weight, in view of the fact that Court of Sessions is well-empowered to summon a person under Section 193 Cr.P.C. or under Section 319 Cr.P.C. Therefore, summoning of the petitioners by the Court of Sessions being trial Court vide impugned order is not illegal.

Having given anxious consideration to the rival submissions, this Court finds the instant petitions completely devoid of any merit for the reasons to follow.

Arguments, which have been raised before this Court, were agitated and have been negated by the trial court by giving specific findings in detail. Relevant portion of the impugned order touching the arguments of learned counsel for the petitioners is reproduced hereunder: -

“5. The main contention of the learned counsel for the accused Raj Kumar and Kuldeep Singh Bhullar is that the abovesaid application has been filed under Sections 190, 239 and 240 Cr.P.C. which are dealing with the powers of taking cognizance of the offence by the Magistrate. Further, contention of the learned counsel for the accused is that

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application has not been filed by prosecution/Ld. Addl. PP but by the private counsel for the complainant, who is not competent and authorised to file such like application. Further submission is that in the inquiry made by the Special Investigation Team formed by the higher police officials, the abovesaid persons were found innocent, so the application is not maintainable.

x x x x x x

7. I have paid considerable thought to the aforesaid submissions. After perusing the police report alongwith first statement of the complainant on which FIR has been lodged, and as per the version mentioned in the statements the eye witness of the occurrence recorded under Section 161 Cr.P.C. i.e. Munish Kumar, Shakti and Sanjay Kumar shows that they have made the statements on similar lines as per the version of the complainant. So, from whole abovesaid material, prima faice this fact is made out, that there is sufficient material against accused Raj Kumar, Anita, Abhishek, Darshna Devi, Usha Rani and Shubham, showing their active involvement in the alleged offence involved in the occurrence of this case. So abovesaid persons are required to be summoned in this case. The offence in this case are under Section 302/307/447/506/511/120-B/34 IPC and 25/27-54-59 of Arms Act, which are serious in nature.

Further, after going through the case law, referred by the learned counsel for the complainant, as discussed above i.e. Dharam Pal vs. State of Haryana (supra) and Balveer Singh and another vs. State of Rajasthan and another (supra) this fact is very much clear that the court of Sessions acting as a court of original jurisdiction could be summon under Section 193 Cr.P.C. on the basis of record transmitted to it as a result of the commital order passed by the Magistrate. Sessions Judge is not to wait till stage indicated in Section 319 Cr.P.C. is reached of the case.

Further, wrong mentioning of Section in the application also in no way affect the maintainability of the application. Similarly, filing of application by the private counsel of the complainant also in no way can be made the ground to throw away the said application as it is settled law that even court at the time of taking cognizance of the offence of the case, should apply its mind independently to the police report and other material and if finds that involvement of the other persons as accused in this case is prima facie out who ought to be tried and against whom case should further proceed with, who has not been arrayed as accused by the Investigating agency, could issue summons to said accused persons. Hence, it is ordered that Ram Kumar son of Des Raj, Anita wife of Raj Kumar, Abhishek son of Ram Kumar, Darshna Devi wife of Des Raj, Usha Rani wife of Harmesh Kumar whose names are mentioned in column No.2 of the challan/police report are ordered to be summoned for the offence under Sections 302/307/447/506/511/120-B/148/149 IPC and 25/27-54-59 of Arms Act. As the major offences involved in this case are of warrant case nature, so it is ordered that bailable warrants of the abovesaid accused for the sum of Rs.5,000/- with one surety of the like amount of each be issued for 25.8.2017. Accordingly, the application filed by the counsel for the complainant stands accepted and disposed off.”

Perusal of the aforesaid findings of the trial Court shows that it, after application of mind has summoned the petitioners as accused, considering their specific role and not simply on the basis of application of the complainant.

Mentioning of wrong Sections in the application in itself does not debar a Court to take cognizance of the matter on merit, more particularly when by this time it is well-settled that no one should be

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condemned or non-suited on technical grounds.

As discussed above, trial Court was well-competent to summon petitioners under Sections 193 and 319 Cr.P.C, therefore, typographical mistake of mentioning wrong Sections 190, 239 and 240 instead of Sections 193 and 319 Cr.P.C. does not go to the root of the case and affect the merit of the case.

Dismissed.

December 06, 2018
R.S.

(RAMENDRA JAIN)
JUDGE

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