

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

CRM-M No. 41219 of 2016

DATE OF DECISION :- March 20, 2018

Jaswinder Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Hitesh Verma, Advocate for the petitioner.

Mr. Rakeshinder Singh Sidhu, AAG, Punjab.

This petition under Section 482 Cr.P.C. has been filed by petitioner Jaswinder Kaur seeking quashing of impugned order dated 8.8.2016 passed by Sessions Judge, Barnala vide which the revision petition filed by the petitioner against order dated 5.12.2015 passed by the Judicial Magistrate Ist class Barnala in case F.I.R. No. 19 dated 9.4.2013 registered with Police station Bhadaur under Sections 452, 324, 148, 149 IPC, thereby dismissing the application filed by the petitioner under Section 319 Cr.P.C. had been passed.

Briefly stated the facts of the case as per prosecution story are that F.I.R. in this case was recorded on the basis of statement of complainant Jaswinder Kaur which she made to the police interalia stating that on 8.4.2013 at about 9.30 P.M., when she and her husband Balwinder Singh were sitting on a cot in the courtyard of their house, gate of their house was opened forcibly. Then Avtar Singh along with his relatives

Balwant Singh, Kulwant Singh and three unknown persons having wooden battons/sticks trespassed in their house. Balwinder Singh gave a wooden batton blow on the backside of head of Balwinder Singh. Balwant Singh gave a blow with a wooden batton, Kulwant Singh gave an iron Dah blow on the left leg of Balwinder Singh, whereas two unknown persons gave stick blows to Balwinder Singh. Due to injuries blood started oozing. Balwinder Singh fell on the ground and became unconscious and then unknown persons gave stick blows in the stomach of Balwinder Singh. The complainant raised hue and cry which attracted persons from neighbourhood. Jaswant Singh Sarpanch of village Jangiana also came there. The complainant along with Jaswant Singh Sarpanch removed Balwinder Singh injured to Civil Hospital, Barnala from where he was referred to Rajindra Hospital, Patiala.

The motive for the incident was that Simranjit Kaur wife of Avtar Singh was throwing garbage in front of house of the complainant and when the complainant protested, the accused caused injuries to Balwinder Singh.

After registration of formal F.I.R., the matter was investigated and challan against accused Kulwant Singh, Balwant Singh and Avtar Singh was presented in the Court. On presentation of challan and after complying with the necessary formalities, the accused were charge sheeted for offences under Section 148, 452 read with Section 149 IPC, to which they pleaded not guilty and claimed trial.

During the trial, statements of various prosecution witnesses were recorded i.e. Balwinder Singh injured as PW1, Jaswinder Kaur complainant as PW2 and Dr. Rajinder Kumar PW3.

In the meanwhile, the prosecution had moved an application under Section 319 Cr.P.C. for summoning of Buta Singh, Kallu and Gaggi as additional accused for the reason that PW Balwinder Singh has specifically named them. However, that application was dismissed by the trial Magistrate vide order dated 5.12.2015 with the following observations :-

“In the considered view of this Court after going through the statement of PW Jaswinder Kaur on 9.4.2013 on basis of which F.I.R. was registered, PW Jaswinder Kaur failed to name these three accused persons specifically. Even after perusing the statement of Balwinder Singh under Section 161 Cr.P.C. even PW Balwinder Singh in his earlier statement failed to specifically mention the names of the these three persons during the examination-in-chief. The complainant Jaswinder Kaur again has not specifically mentioned the names of three persons sought to be summoned as additional accused by the prosecution. Only PW Balwinder Singh in his examination-in-chief dated 06.10.2015 has specifically averred the names of these three persons. It only shows the improvement in the story of the prosecution, since if it would have been the true chain of events then PW Balwinder Singh and PW Jaswinder Kaur must have mentioned their names in their earlier version recorded before the police. Therefore, by way of new improvements, the persons sought to be summoned cannot be made additional accused to face trial along with the main accused. Therefore, the present application under Section 319 filed by the complainant through State is hereby dismissed being devoid of any merits.”

This order was challenged by way of filing revision petitions before the Court of Sessions. However, learned Sessions Judge Barnala had dismissed the said revision petition with the following observations :-

“From the perusal of trial Court file, it is clear that the FIR of

this case was recorded on the statement of the complainant Jaswinder Kaur on 9.4.2013. From this statement of the complainant, on the basis of which F.I.R. was recorded, it is clear that she has not named the persons sought to be summoned as accused. It is further clear that complainant Jaswinder Kaur while appearing as prosecution witness on 6.10.2015 and while appearing as prosecution witness she has not named the accused sought to be summoned. She has stated in her statement that all other three persons were not present in the Court. It is clear that she has deposed that accused present and three other persons had taken part in thrashing her husband. During her evidence, the complainant has not named the persons sought to be summoned as accused. Only her husband Balwant Singh, whose evidence was recorded on the same day i.e. 6.10.2015, has named Buta Singh son of Ram Singh, Kalu Singh son of Ruldu Singh and Gaggi son of Buta Singh residents of village Burj Gill and has alleged that they had also participated in the occurrence. Even from the evidence of Balwinder Singh prosecution witness, it is clear that he has not attributed any specific role to the persons sought to be summoned. It is also clear that the complainant has not named the persons sought to be summoned in her statement recorded on 9.4.2013 nor she has named these persons in her statement recorded on 6.10.2015. So, it is clear that no prima-facie case for summoning these persons as accused is made out. The learned lower Court has rightly dismissed the application under Section 319 Cr.P.C.”

Feeling dissatisfied, the petitioner-complainant has filed the present petition, notice of which was give to the respondents.

I have heard learned counsel for the petitioner and learned State counsel besides going the record.

I find that there is absolutely no merit in this petition. Section 482 Cr.P.C. deal with inherent power of the High Court to make such orders

as may be necessary to give effect to any order under the Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. The present case does not fall within four corners of such provision. Law with regard to summoning of additional accused under Section 319 Cr.P.C. has been settled by a Constitution Bench of this Court in ***Hardeep Singh v. state of Punjab and others 2014(1) R.C.R. (Criminal) 623*** where this issue was discussed at length, and while dealing with Question No. IV as to what is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to array an accused and whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted? The question was answered as under :-

“Though under Section 319(4)(b) Cr.P.C. The accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial-therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.”

The trial Magistrate did not find the evidence available on the record to be of such magnitude and quality to summon the persons named in the application as additional accused that is on the subjective satisfaction of the Court concerned. The trial Magistrate has given valid reasons for

coming to the conclusion that application deserves to be rejected. Similarly order passed by Sessions Judge is also well reasoned agreeing with the trial Magistrate.

I do not find any reason to interfere with the impugned orders.
Therefore, the petition stands dismissed.

(H.S. MADAAN)
JUDGE

March 20, 2018
p.singh

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