

In the High Court of Punjab & Haryana at Chandigarh.

CRM-M-6570-2015

Date of decision: 20.03.2018

Kashmira Singh and Ors

..... Petitioners.

VS.

State of Punjab and Anr

..... Respondents.

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. A.K.Walia, Advocate
for the petitioners.

Mr. Abhaypal Singh Gill, AAG, Punjab.

None for respondent No.2.

ARVIND SINGH SANGWAN,J.(ORAL)

Prayer in this petition is for setting aside the order dated 08.08.2013 (Annexure P3) passed by the trial Court, vide which the petitioners have been summoned as additional accused, on an application moved by the prosecution under Section 319 Cr.P.C. in case FIR No. 37 dated 30.04.2010 under Sections 451/323/342/506/148 and 149 IPC as well as the order dated 17.12.2014 (Annexure P5) passed by the Additional Sessions Judge, vide which the revision petition filed by the petitioner was dismissed.

Brief facts of the case are that respondent No.2/complainant has got the aforesaid FIR registered against 14 persons with the allegations that on 30.04.2010, they have caused injuries to the complainant and she was rescued by her nephews Boota Singh and Parkash Singh and daughter-in-law Manjit Kaur. When these persons came to her rescue, even they were also given beatings by the accused persons.

After the investigation, the challan was presented against Ghola Singh, Mandeep Singh @ Deepa, Gupreet Singh @ Marru, Paramjit Kaur and Jaswinder Kaur under Sections 451/342/323/506/148 and 149 IPC. The trial Court framed charges against the abovesaid persons and thereafter, statement of complainant-Shinder Kaur was recorded as PW1 and in her deposition before the trial Court, she has reiterated her version given in the FIR and no overt act or specific role was attributed to the petitioners who were found innocent during investigation.

After recording the statement of the complainant, the prosecution moved an application under Section 319 Cr.P.C. for summoning the petitioners as additional accused.

In the application, it is stated that in the complaint made before the police as well as the statement recorded under Section 161 Cr.P.C., complainant-Shinder Kaur has named all the present petitioners and she has reiterated her version while appearing as PW1 before the trial Court. The accused persons, who were facing the trial, filed reply to the application and contested the same.

The trial Court vide its impugned order 08.08.2013 allowed the application and summoned the petitioners as additional accused. The petitioners challenged the said order before the Revisional Court and the Court of Additional Sessions Judge, vide order dated 17.12.2014 dismissed the revision petition.

Counsel for the petitioners has submitted that both the impugned orders passed by the trial Court as well as the Revisional Court suffer from a patent illegality that it is no-where mentioned in both the orders that under what section, the petitioners have been summoned as

additional accused. It is also submitted that it is the case of the prosecution itself that in the application filed under Section 319 Cr.P.C., complainant-Shinder Kaur has reiterated her version given in the statement under Section 161 Cr.P.C. and, thereafter, no fresh evidence has come on record to show that the petitioners have done any overt act and no subsequent role was attributed to the petitioners in both the statements of Shinder Kaur.

Counsel for the petitioners has further submitted that since in the investigation, the petitioners were found innocent, the Courts below have also not looked into this aspect of the matter.

Counsel for the petitioners has relied upon the judgment titled as “Hardeep Singh vs. State of Punjab and others” and other connected cases, 2014 (1) RCR (Criminal) 623, wherein the Hon'ble Supreme Court has held that where the statement of prosecution witness is nothing but reiteration of the statement made under Section 161 Cr.P.C., the Court must record a finding that the evidence which has come on record is cogent and reliable for summoning an additional accused under Section 319 Cr.P.C.

It has come in the statement of complainant, who has appeared as PW1, copy of which is annexed as R1/T with the reply, that she has stated about the manner of causing injuries to her and her family members as per version in FIR.

A perusal of the last few orders shows that no one is appearing on behalf of respondent No.2-complainant.

After hearing counsel for the parties, I find merit in the present petition.

A perusal of summoning order dated 08.08.2013 shows that the trial Court has not passed a specific order, under which sections the

petitioners are summoned and this finding has been upheld by the Revisional Court without looking into this aspect of the case.

Statement of complainant-Shinder Kaur, while appearing as PW1, is reiteration of her version given in the FIR.

In view of the judgment of Hon'ble Supreme Court in **Hardeep Singh' case** (Supra), the petition is allowed. The impugned order dated 08.08.2013 passed by the trial Court and order dated 17.12.2014 passed by the Revisional Court are set aside. The matter is remanded back to the trial Court to pass a fresh order on the application filed by the prosecution under Section 319 Cr.P.C. in view of directions given by the Hon'ble Supreme Court.

20.03.2018
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(ARVIND SINGH SANGWAN)
JUDGE

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