

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

CRM-M-6434-2016

Date of decision:-22.3.2018

Sukhjit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

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

Present : Mr.Ashwarya Bajaj, Advocate
for the petitioner.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

Mr.Onkar Singh, Advocate
for respondent No.2.

H.S. MADAAN, J.

By way of filing the present petition under Section 482 Cr.P.C., the petitioner – Sukhjit Singh seeks quashing of order dated 4.9.2015 passed by learned Additional Sessions Judge, Kapurthala in Criminal Revision No.94 of 2014 vide which he had set aside order dated 28.4.2014 passed by Judicial Magistrate Ist Class, Kapurthala summoning Manju Rani – respondent No.2 as additional accused.

Briefly stated facts of the case are that complainant Kashmir Singh son of Beghel Singh, resident of village Shahpur, Tehsil

Nakodar, District Jalandhar had submitted a written complaint to Senior Superintendent of Police, Amritsar for registration of case against Gurmeet Kaur under Sections 419, 420, 467, 468, 471 IPC etc. contending therein that they are two real brothers, namely, Sukhjit Singh and Harpal Singh; that they are owners of agricultural land measuring 17 Kanals 17 Marlas situated at village Budda Theh, Tehsil Baba Bakala, District Amritsar; that one Gurmeet Kaur daughter of Chanan Singh son of Narain Singh, resident of Dhilwan, District Kapurthala had moved an application before the Executive Magistrate, Baba Bakala for entering of mutation regarding that 17 Kanals 17 Marlas of land claiming that she is the legal heir of Beghel Singh, father of complainant; that as a matter of fact, she is not related to Beghel Singh and wrongly claimed to be his legal heir; that Beghel had died at village Shahpur in the year 1980 and not in the riots in the year 1984; that Gurmeet Kaur had moved a false application and she had submitted an affidavit attested/identified by Manju Rani Sharma, Councilor, Nagar Panchayat Dhilwan, District Kapurthala; that the attestation was done by the Executive Magistrate; that in the affidavit Gurmeet Kaur claimed to be heir of Sh.Beghel Singh stating that her father, Beghel Singh and grandfather had died in 1984 riots. On the basis of that written complaint, formal FIR was registered. After completion of investigation, challan against Gurmeet kaur was prepared and filed in the Court, whereas Manju Rani Sharma was not challaned. During the trial, an application under Section 319 Cr.P.C. was filed for summoning of Manju Rani and Major Singh, Patwari as additional accused. Vide detailed order dated 28.4.2014, Judicial Magistrate Ist Class, Kapurthala allowed the application with the

following observations:

Statement given in examination-in-chief constitutes evidence and the Court can exercise power under Section 319 Cr.P.C. and need not to wait for evidence against person proposed to be summoned to be tested by cross-examination. Degree of satisfaction for invoking power under Section 319 Cr.P.C. exists in circumsphere of facts of present case and evidence so far adduced on record. Reliance in this context can be placed on Hardeep Singh Vs. State of Punjab 2014(3) SC 92 .

It has been very clearly stated in the testimony of PW2, that documents in question were identified by Manju Rani Sharma. Major Singh Patwari is stated to have knowledge about the true ownership of the land which alleged to be owned by the complainant. Despite that he has issued Khasra Girdawaris and Fard Jamabandis to accused Gurmeet Kaur. Hence, specific attribution is made to both Manju Rani Sharma and Major Singh Patwari. Accordingly, the Court finds sufficing evidence at the present juncture to summon both of them as additional accused.

When challenged in the revision petition, that order was set aside by learned Additional Sessions Judge, Kapurthala vide order dated 4.9.2015, which left the petitioner/complainant aggrieved and he has filed the present petition.

Notice of the petition was issued to the respondents, who

put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The order passed by the trial Magistrate does not appear to be suffering from any illegality or infirmity much less apparent on the fact of it. Therefore, the Court of learned Additional Sessions Judge, Kapurthala should not have upset the said order looking into the minute details touching the merits of the case. The trial Court dealing with the matter having a chance to observe the demeanor of the witnesses with the entire record available before it, is in the best position to reach a particular conclusion. The trial Magistrate had kept in mind the law on the subject by referring to a landmark authority i.e. **Hardeep Singh Vs. State of Punjab 2014(3) SC 92.**

Learned counsel for the petitioner has referred to authority **Balbir Singh and others Versus State of Punjab and another, 2011(19) R.C.R.(Criminal)177** by a Co-ordinate bench of this Court wherein dealing with contention that Court below has committed error in summoning the accused on the basis of statement of complainant, which was recorded by the police and has been reiterated in the Court, it was observed that finding of exoneration recorded by investigating agency cannot be given precedence over the finding recorded by Judicial Court on the basis of contents of the complaint, FIR and also substantive testimony of complainant during trial, who withstand the cross-examination. It was observed that it is reasonable satisfaction of Court about role played in person sought to be summoned as additional accused, which was so recorded in the instant case.

Learned counsel for the petitioner has further referred to authority *Ram Pal Singh and Ors. Versus State of U.P. & anr., 2009(2) R.C.R.(Criminal) 131* by the Apex Court, wherein it was observed that the Court can summon a person as accused if complicity of that person in commission of offence appeared to be clear and a discretion is left to the Court to take a decision on the matter. In another authority by the Co-ordinate bench of this Court i.e. *Kairon Singh Versus State of Punjab and another, 2013(3) R.C.R.(Criminal) 318*, it was observed that this Court can interfere in the order of summoning the accused not sent up for trial on the following grounds:

- (i) The Sessions Judge has no jurisdiction to issue process against such person;*
- (ii) There was a fundamental legal defect going to the root of the proceedings;*
- (iii) There was absolutely no cause against the petitioner on the version laid in evidence oral or documentary adduced before the Court;*
- (iv) All the residential ingredients for the offence for which he has been summoned were not laid in the FIR or did not appear in evidence;*
- (v) There was anything capricious or arbitrary in the exercise of such discretion by the Sessions Judge or;*
- (vi) There has been abuse of the process of the Court.*

I find that the order passed by learned Additional Sessions Judge, Kapurthala setting aside a legal, valid and well reasoned order passed by the trial Magistrate is not sustainable. Accordingly, the same

is liable to be quashed while exercising jurisdiction under Section 482 Cr.P.C. It is ordered accordingly.

The petition in that way is accepted.

22.3.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No