

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

**CRM-M No.5111 of 2017
Decided on: 22.05.2018**

Kamal Singh

....Petitioner

Versus

Ranvir Singh and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. Sanjay Vashisth, Advocates
for respondents No.1 to 5.

Ms. Harpreet Kaur, AAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting-aside the order dated 30.11.2016 (Annexure P3) passed by the Sub-Divisional Judicial Magistrate, Charkhi Dadri, vide which the application filed by the petitioner/complainant under Section 319 of the Code of Criminal Procedure (in short 'Cr.P.C.') for summoning of 02 persons namely Ravinder and Amit as additional accused was dismissed as well as the order dated 31.01.2017 passed by the Revisional Court vide which the revision filed by the petitioner was also dismissed.

Brief facts of the case are that FIR No.91 dated 16.05.2012 under Sections 323, 325 read with Section 34 IPC was registered at the instance of one Ranvir Singh son of Gulab Singh at Police Station City Charkhi Dadri, on the allegations that on 15.05.2012 at about 07:00 pm when he was in his fields situated about 02 acres from his house, Karan

Singh son of Hari Singh came and gave him a lalkara. Thereafter, Kamal Singh son of Hari Singh, Abhey Singh son of Hari Singh, Krishan and Anil sons of Karan Singh, Mahabir Singh son of Abhey Singh and wives of Karan Singh and Kamal Singh came with lathi and, thereafter, Kamal Singh fired a shot from his revolver which had gone above him and due to fear, he ran away towards his house for saving his life. Karan Singh, thereafter, also fired 2-3 shots in air and when, said Ranvir Singh reached near his house, Karan Singh gave a danda blow on his back, Krishan gave a Kulhari blow on his right hand wrist. On raising noises, his son Ravinder, his wife and mother came there and saved him.

Later on, the petitioner – Kamal Singh and another filed CRM-M No.19457 of 2012 praying for registration of a cross-case against the complainant party i.e. Ranvir Singh and, thereafter, the police made a statement in that case that the cross-version has been registered on the statement of Karan Singh son of Hari Singh against the complainant party and the petition was disposed.

In the cross-version, it is stated by Karan Singh that on 15.05.2012, when he reached near the house of his brother Kamal Singh (petitioner), he heard noise of cries and when he entered his house, he saw Ranvir Singh son of Gulab Singh carrying an axe in his hand, wife of Ranvir Singh armed with iron rod, Ravinder son of Ranvir Singh carrying a hockey in his hand and sister's son namely Naresh carrying a bamboo stick along with 4-5 other persons and they were giving beatings to his brother and when he intervened, a person gave lathi blow on his right leg and Ranvir Singh gave an axe blow on his left leg

toe. When he fell down Sonu son of Ranvir gave lathi blow and he became unconscious. The accused ran away from the spot after taking away Rs.15,000/- from the pocket of the complainant.

Thereafter, the police has submitted that challan under Section 173 Cr.P.C. in both the version and cross-version cases and in the cross-case i.e. the present case, after recording the statement of the complainant, an application was moved for summoning 02 persons namely Ravinder and Amit, as additional accused which was dismissed by the Courts below, vide impugned orders.

Counsel for the petitioner has submitted that in the main FIR, the police has recorded the statement of Ravinder son of Ranvir Singh under Section 161 Cr.P.C. on 16.05.2012 (copy attached as Annexure P6) wherein he has stated that he is the only son of his parents and on the day, when the accused persons (in the FIR case) caused injuries to his father, he along with 02 other persons reached at the spot and they saved his father from the accused persons. It is further submitted that similar statement was made by Ranvir Singh son of Gulab Singh under Section 161 Cr.P.C. (which, formed the basis of registration of the FIR) that when the accused persons caused him injuries, his son Ravinder, wife and mother came there and saved him.

It is, thus, submitted on behalf of the petitioner that the presence of Ravinder son of Ranvir is proved from his own statement as well as statement of his father – Ranvir in the FIR case and, therefore, both the Courts below have wrongly declined to summon him.

With regard to the second person namely Amit, it is stated that in the statement of Karan Singh i.e. in the cross-version, he has

named him as sister's son and, therefore, his presence is also proved at the spot. Counsel for the petitioner has further submitted that the powers under Section 319 Cr.P.C. are wide power given to Courts to summon any person against whom such evidence has come on record. It is submitted that in the statement of the petitioner, recorded as PW1 before the trial Court, he has reiterated the version given before the police, therefore, the Courts below have wrongly refused to summon the above-named 02 persons as additional accused.

In reply, counsel for the State as well as counsel for the complainant have submitted that while conducting the enquiry, the police has obtained the affidavits of few persons namely Om Parkash and Ashok Kumar who have stated that Ravinder and Amit were innocent and have been falsely implicated and, therefore, no challan was presented against them in the cross-version. It is further submitted that both the Courts below have rightly dismissed the application of the petitioner/complainant in the light of the judgment passed by the Hon'ble Supreme Court ***“Hardeep Singh vs State of Punjab”***, 2014(3) SCC 92 as the evidence which has come on record is nothing but mere reiteration of the version given to the police and it does not prove that more than *prima facie* case is made out against Ravinder and Amit to summon them as additional accused.

In reply, counsel for the petitioner has submitted that in the report submitted under Section 173 Cr.P.C. in FIR case, no reason has been assigned for not submitting the challan against these 02 persons and only on the basis of the police zimini, the police has held them innocent on the basis of the affidavits of some of the villagers who are

none other than the family members of accused Ravinder.

After hearing the counsel for the parties, I find no merit for summoning Amit as an additional accused as neither he has been named in the cross-version nor any fresh evidence has come against him. However, I find merit with regard to the submissions made by the petitioner in respect of Ravinder, for the following reasons:-

(a) In his own statement made by Ravinder son of Ranvir Singh dated 16.05.2012 before the police under Section 161 Cr.P.C., he admitted that he was present at the spot when the accused persons in the FIR case, caused injuries to his father. Even, in the statement of his father – Ranvir Singh, the victim in the main FIR, he has stated that his son Ravinder along with his wife and mother came to his rescue when the accused persons were causing injury to him and, therefore, non-submission of challan against this person namely Ravinder on the ground that some of the villagers have given affidavit that he was not present is against the record.

(b) Even in the reply, filed, on behalf of the Deputy Superintendent of Police, Headquarter, Charkhi Dadri, by way of affidavit dated 28.07.2017, nothing is mentioned how said Ravinder was found innocent except that during investigation, he along with Amit were found innocent.

(c) The brother of the petitioner namely Karan Singh in his statement has clearly indicted Ravinder son of Ranvir in the cross-version by saying that he had given hockey blow on the thigh of his left leg and this injury finds corroboration from the MLR of injured – Karan Singh and the petitioner – Kamal Singh, who had sustained 12 injuries. As per MLR, injury No.7 is an abrasion of 2 x 1 cm over the left knee corresponding

*injury attributed to Ravinder and therefore, the police while submitting the report under Section 173 Cr.P.C. has not given a single reason for holding that Ravinder son of Ranvir as innocent person. Therefore, in the light of the judgment of the Hon'ble Supreme Court in **Hardeep Singh's case (supra)**, I am of the considered opinion that the petitioner has brought on record more than prima facie evidence as Ravinder as well as his father Ranvir Singh have themselves admitted presence of Ravinder at the place of occurrence and as per the statement of the complainant – Karan Singh, the injury attributed to Ravinder is prima facie corroborated with the medical record and it cannot be said that the statement of PW1 is mere reiteration of the statement made before the police.*

In view of the above, this petition is partly allowed. The prayer of the petitioner for summoning Amit as additional accused is dismissed, however, the petition for summoning Ravinder as additional accused is allowed.

(ARVIND SINGH SANGWAN)
JUDGE

22.05.2018
yakub

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