

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

CRR-2391-2017

Date of decision:-19.4.2018

Kanta

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present: Mr.Rahul Deswal, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

Mr.Vishal Yadav, Advocate for
Mr.Vikrant Hooda, Advocate
for respondents No.2 and 3.

H.S. MADAAN, J.

This revision petition is directed against the order dated 3.5.2017 passed by the Court of learned Additional Sessions Judge, Jhajjar vide which an application under Section 319 Cr.P.C. filed by the petitioner (complainant) for summoning of Kamlesh, Dharam Singh and Saurabh as additional accused was dismissed.

Briefly stated, facts of the case are that the FIR was got recorded by complainant Kanta wherein she stated that on 28.6.2015 at about 7:00 a.m. when she along with her husband Sajjan Singh

was returning from their fields then Master Jogender Singh son of Kure Ram and his wife Sushila along with Kamlesh daughter of Kure Ram, Dharam Singh son-in-law of Kure Ram, Om Parkash son of Daya Ram, Saurabh son of Master Jogender Singh along with three other relatives of Master Jogender Singh, one of them being Sarang gave beatings to them and thereafter they ran away. The motive for the incident was that Jogender Singh used to level allegations on Sajjan Singh that he was keeping an evil eye on his wife. After registration of the formal FIR, the case was investigated. However, only accused Sarang, Jogender Singh, Om Parkash and Sushila were challaned. They were sent up to face trial, during the course of which application in question was moved. The same was dismissed by the trial Court vide the impugned order in light of the evidence available on record and settled legal position for summoning of additional accused.

Feeling aggrieved, the complainant has filed the present revision petition, notice thereof was given to the respondents.

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

In para No.7 of the impugned order referring to statement of complainant Kanta as PW1, the trial Court has observed that she has recited the names of the persons, namely, Dharam Singh and Kamlesh at the first instance of disclosing the set of assailants,

though not naming Saurabh as assailant and even during the later part of her examination-in-chief, she did not make a single reference about the involvement of Saurabh in the assault, what to talk of depicting the role of Saurabh. Therefore, no ground was found to proceed against Saurabh under Section 319 Cr.P.C. In para No.8 referring to Kamlesh and Dharam Singh, it has been observed that the medical evidence does not corroborate the ocular evidence rendering the involvement of Kamlesh and Dharam Singh in the incident to be doubtful. It has to be taken note of that during the investigation they were found to be innocent. The conclusion drawn by the trial Court is as under:

Likewise, for the proposed accused Dharam Singh, the complainant has not narrated any peculiar facts with respect to the role played by said Dharam Singh in causing any injury to Sajjan Singh, during her deposition as PW1. Same defect is also suffered by her fundamental statement Ex.PW1/A. Above that, the complainant has not stated a single word during her examination-in-chief to infer that the police colluded with the accused and carried out the investigation wrongly and exonerated some of the accused unlawfully. In such circumstances, paying regard to the repeated investigations carried out by the police, even a reasonable suspicion cannot be

drawn regarding the involvement of the said persons Kamlesh, Saurabh and Dharam Singh in the assault allegedly committed upon Sajjan Singh and PW1 Kanta on 28.6.2015. Such special power as envisaged under Section 319 of Cr.P.C. is required to be invoked only when there is a strong impeccable evidence regarding involvement of the proposed accused, in the commission of offence concerned and not merely on the basis of statement of the complainant when there is no other supportive evidence on the record.

The law on the subject is very clear that unless the trial Court is satisfied that there is sufficient cogent and convincing evidence available on record warranting summoning of the additional accused, they are not to be summoned in routine in a mechanical manner. It was subjective satisfaction of the trial Court, which seems to be exercised in a fair and judicious manner and no element of arbitrariness is found to be there.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

In the present case, I do not find any such illegality or infirmity with the impugned order much less apparent on the face of it. The order is certainly not in violation of settled principles of criminal jurisprudence. I do not see any reason to upset the impugned order.

Therefore, revision petition challenging that order cannot survive and is dismissed accordingly.

19.4.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No