IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-8665 of 2018
Date of Decision: March 05,2018

Harvinder Kaur .....Petitioner

Versus

State of Punjab and Others .....Respondents

CORAM:HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms.Shaurya Puri, Advocate
for the petitioner.

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ARVIND SINGH SANGWAN, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure,1973 (`Cr.P.C. for short) for setting aside order dated 28.1.2016 (Annexure P2) passed by the trial Court declining to summon respondents No. 3 and 5 in the Criminal complaint No. 49 dated 21.5.2015 filed by him as well as order dated 18.1.2018 (Annexure P3) passed by the Additional Sessions Judge, vide which the revision petition filed by the petitioner, was dismissed.

The brief facts of the case, as noticed by the revisional Court in paras 2 to 4 of its judgment, are as under:-

> " That on 21.1.2012 at about 4.00 p.m., when the complainant was coming from her "*Haveli"* with fodder, Shital Singh (since deceased) armed with "*Dattar*", Jaskaran Kaur armed with *"Dang",*

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Surinder Kaur empty handed, Dalvir Singh empty handed. Mehar Singh armed with *"Dang"* and Palwinder Kaur empty handed came towards the complainant with common intention and common object to kill the complainant by giving injuries and accused Surinder Kaur raised *"Lalkara"* that the complainant should be taught a lesson to file a civil case against them. Then all the accused abused the complainant and then Shital Singh gave a "*Dattar*" blow on the back of the head with intention to kill her, then Jaskaran Kaur gave two "*Dang"* blows on the back of the complainant and Surinder Kaur gave a fist blow on the stomach of the complainant. At that time one Hardev Singh, son of Bawa Singh r/o village Lakhan Kalan, Tehsil and District Kapurthala was present there, who saw the occurrence. In the meanwhile, the complainant had raised hue and cry, then the husband of the complainant namely Lakhvir Singh came at the spot. On seeing the husband of the complainant and Hardev Singh, all the accused ran away from the spot with their respective weapon.

3.Thereafter, the husband of the complainant managed a vehicle and took the complainant to Civil

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Hospital, Kapurthala, where the complainant was medically examined and MLR No. 7/Kapurthala dated 21.1.2012. On the statement of the complainant a case FIR No. 05 dated 22.1.2012 u/s 323, 324/34 IPC has been registered at P.S.Kotwali, District Kapurthala against Shital Singh (since deceased) accused Jaskaran Kaur, Surinder Kaur and three unidentified persons.

4. Thereafter, in the meanwhile Shital Singh had expired on 26.5.2012 at DMC, Ludhiana due to his ill health and after that the police in connivance with other accused did not present the challan against co-accused and the police official intentionally and in collusion with accused party only declared Shital Singh as accused. It is pertinent to mention here that the police in collusion with accused got registered a cross-case against the complainant and her husband and presented the challan against the complainant only, as the name of her husband shown in column no.2 of the report u/s 173 Cr.P.C. The complainant moved any application to the police authority on 26.8.2014, 10.10.2014, 01.04.2015 for presenting the challan against the accused and the SHO PS Kotwali made a report on

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3.4.2015 by mentioning that the complainant could approach before the competent Court of law as the police had presented the challan of this case. So the accused are liable to be punished under the law. Hence, the present complaint."

After petitioner-complainant led his preliminary evidence, the trial Court vide order dated 28.1.2016 summoned only respondents No.1, 2 and 4 under Sections 324/34 IPC. Thereafter, the petitioner filed the revision petition challenging the aforesaid order and praying that the respondents No.3 and 5 be also summoned in the criminal complaint. The Additional Sessions Judge vide impugned order dated 18.1.2018 dismissed the revision. Hence, the present petition.

Learned counsel for the petitioner has submitted that it is proved from the statement of complainant CW1, which is duly corroborated from the medical version by CW4- Rajdeep Kaur, that the accused persons caused four injuries on the person of the complainant out of which injury No.1 was an incised wound and it was attributed to co-accused-Shital Singh since deceased and injuries Nos. 2 to 4 which are caused with blunt weapon are attributed to the other accused. Learned counsel for the petitioner has laid much emphasis on the fact that all the accused persons included accused No.3-Dalvir Singh and accused No.5-Palwinder Kaur had caused the injuries with common intention with other

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accused persons and, therefore, they are also liable to be summoned to face the trial.

After hearing the learned counsel for the petitioner, I find no merit in the present petition for the following reasons:-

(a) A perusal of the FIR Exhibit CW1/B shows that the complainant has levelled allegations only against Shital Singh since deceased, accused Jaskaran Kaur and Surinder Kaur. Neither it is stated in the FIR that accused No. 3 and 5 were carrying any weapons nor it is stated that they had caused any injury. Therefore, the mere allegation that they were present at the spot do not prove that they had any conspiracy with other accused persons.

(b) There is a contradiction in the version given in the FIR and the present complaint as the name of accused No. 3 and 5 were not mentioned in the aforesaid FIR and even the instant complaint against accused No.2-Surinder Kaur was withdrawn by the complainant by making a statement dated 23.5.2017.

(c) As per the statement of the complainant, FIR No.5 was registered under Section 323, 324 and 34 IPC but after the investigation, the challan

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was presented only against accused Shital Singh since deceased and even Police on investigation did not found any role of accused Nos. 3 and 5.

(d) As per the statement of CW4, the injuries attributed to accused-Jaskaran Singh and Surinder Kaur were found to be simple in nature and, therefore, both the Courts below on appreciation of evidence have rightly held that no offence under Sections 324 IPC is made out against these two accused. Therefore, I do not find any illegality or perversity in the order passed by the Courts below declining to summon accused Nos. 3 and 5."

In the present case, no grave miscarriage of justice has occurred which would warrant interference by this Court under Section 482 Cr.P.C.

Keeping in view the facts and circumstances of the present case, no ground for interference is made out.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

March 05,2018

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

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