

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

Criminal Revision No. 4441 of 2017(O&M)

Date of Decision: January 22 , 2018.

Sube Deen and others

..... PETITIONER (s)

Versus

State of Haryana and another

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Karan Pathak, Advocate for
Mr. Gautam Dutt, Advocate
for the petitioners.

LISA GILL, J.

CRM No.2254 of 2018

Annexure P7 is taken on record subject to just exceptions.

Exemption from filing certified copy thereof is granted.

Misc. application is disposed of.

CRR No.4441 of 2017

The petitioners are aggrieved of order dated 21.10.2017 passed by the learned Additional Sessions Judge, Palwal whereby all of them have been summoned as additional accused to face trial in FIR No.319 dated 14.09.2016 under Sections 148/149/302/323/354A/379B/120B IPC, Police Station Bahin, District Palwal.

It is noticed that in the abovesaid FIR which was registered on a written complaint submitted by Kasim son of Nasru, specific role is attributed to

each of the petitioners in the incident which led to the death of Rizwan. The said averments have been reiterated in the statement (Annexure P1) of the complainant (PW1) before the learned trial court.

The complainant in his written application submitted that on 13.09.2016 at about 4.30 p.m., he alongwith his brothers Rizwan, Lukman and cousin brother Sahun were present in the fields which falls at the border of village Jalalpur. They had sold jawar of two Biswas in their fields to Noor Deen son of Niwaj. Then Shakeel son of Noor Deen alongwith his niece Razina came on a motorcycle for taking jawar. There is a Neem tree near their fields. 6-7 boys of village Jalalpur were playing cards under the said Neem tree. On seeing his niece Razina they started passing comments. Shakeel protested against the same. The complainant alongwith his brothers came to the spot and stated that sisters and daughters of all are same and should be respected. The said boys were infuriated and stated that they will make them respectable persons and would insult the girl in their presence. All of them in connivance with each other attacked the complainant and others. The boys called some other persons on the spot who were duly armed with lathis, dandas, stones etc. Farukh @ Fammu son of Faujali, Samina daughter-in-law of Faujali held Rizwan by his arms and Sube Deen son of Umarr Deen hit Rizwan on his chest with a stone held by him. Hakmu and Sakmu sons of Subba gave kick and fist blows to Rizwan. In the meantime, Amin @ Kalu and Arshad sons of Nooru reached the spot. They raised lalkara that none of them should go scot free as they had lots of influence and would control the entire situation. Thereafter, all the accused attacked the complainant party. The complainant while running towards the village raised an

alarm. 10-12 persons from the village reached and rescued them. The complainant's brother Rizwan died at the spot, due to injuries received by him. Other persons received injuries as well. The abovesaid FIR was registered on the basis of this complaint. Challan/final report under Section 173 Cr.P.C. was presented only against four persons, namely, Farukh @ Fammu, Shaukin, Faimudeen and Aslam under Sections 302/323/354A/379B/148/149/120B IPC. Amin @ Kalu and Arshad sons of Nooru were found innocent during investigation. It is mentioned in the final report that supplementary challan would be presented against the remaining persons after their arrest. Eight witnesses including the complainant were examined before the learned trial court. An application was moved by the prosecution on 12.10.2017 under Section 319 Cr.P.C. for summoning eleven of the accused persons as detailed in para 7 of the grounds of revision. The learned trial court vide impugned order dated 21.10.2017 summoned the present petitioners, namely, Sube Deen, Samina, Hakmu and Sakmu to face trial as additional accused in the abovesaid FIR.

Learned counsel for the petitioners argues that in the aforementioned FIR, it is alleged that Farukh @ Fammu and Samina (petitioner No.2) caught hold of Rizwan (the deceased) from his hands and petitioner No.1 – Sube Deen repeatedly hit the deceased Rizwan on his chest with a stone. Petitioner No.3 – Hakmu and petitioner No.4 – Sakmu are attributed kick and fist blows to the deceased whereas in his deposition before the learned trial court, the complainant (PW1) stated that Farukh @ Fammu caught hold of the hands of the deceased Rizwan and petitioner No.2 – Samina caught hold of the deceased from the backside. Therefore, the role attributed to petitioner No.2 – Samina is

different in the FIR and the statement. It is further argued that the Investigating Agency in fact found no incriminating material against the present petitioners due to which the supplementary challan was never filed against them. Moreover, the prosecution had earlier moved an application under Section 319 Cr.P.C. after testimonies of PW1 and PW2 were recorded for summoning Arshad and Amin @ Kalu sons of Nooru. The said application was dismissed by the learned trial court on 05.07.2017. The prosecution never moved application for summoning the present petitioners at that stage, therefore, the present application filed subsequently should be dismissed. There is no specific evidence on record to justify the summoning of the petitioners. It is thus prayed that the impugned order be set aside.

I have heard learned counsel for the petitioners and have gone through the file.

It is noted that there are specific allegations raised against the petitioners in the FIR itself and thereafter reiterated by the complainant in his deposition before the learned trial court. Alleged difference in role attributed to petitioner No.2 – Samina in the FIR and the subsequent statement before the learned trial court, cannot constitute a ground for setting aside the impugned order. Another argument raised on behalf of the petitioners is that the prosecution is estopped by its conduct inasmuch as the present petitioners were not sought to be summoned by the prosecution to face trial as additional accused at an earlier stage when an application under Section 319 Cr.P.C. was moved for summoning Arshad and Amin @ Kalu sons of Nooru. In case the prosecution had not filed an application for summoning the present petitioners at an earlier

stage for whatever reasons and the first application was moved for summoning only two of the other accused, an application moved later for summoning the present petitioners (who were never sought to be summoned earlier) cannot be said to be barred. Such an argument is indeed fallacious, untenable hence, rejected. There is sufficient, clear and cogent evidence on record which justifies the summoning of the petitioners in this case.

It has been held by the Hon'ble Supreme Court in Hardeep Singh v. State of Punjab, 2014(1) RCR (Criminal) 623 that there has to be something more than a prima case than mere probability of the complicity of the persons sought to be summoned as additional accused. In the present case there is sufficient and cogent material on record which justifies the summoning of the petitioners as additional accused to face trial in the aforementioned FIR. There is nothing on record to indicate that the learned trial court has exercised its jurisdiction in a casual or cavalier manner.

Learned counsel for the petitioners is unable to point any illegality or perversity in the impugned order dated 21.10.2017 passed by the learned Additional Sessions Judge, Palwal which calls for interference by this Court in revisional jurisdiction.

It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

January 22 , 2018.
'om'

(LISA GILL)
JUDGE

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