

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 2335 of 2018 (O&M)

Date of decision : 23.7.2018

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Nirdosh Kumar and others

.....Petitioners

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Argued by: Mr. Naresh Kaushal, Advocate
for the petitioners.

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H. S. Madaan, J.

Complainant Jaswinder Kaur w/o Rajesh Kumar, r/o village Togan, Police Station Mullanpur Garibdass, District SAS Nagar, aged about 37 years, had got her statement recorded with the police of Police Station Mullanpur on 22.2.2017, wherein she stated that on that day at about 7.30 A.M. while she was going to throw the garbage, then Rajiv Kumar @ Panda, who is a drug addict and a notorious boy of their village, came there from front side and while crossing her, he uttered some bad words. When she asked him to whom he was saying, he replied that it was for her, since she had made a complaint against him with Block Samiti Member Jagmal

Singh. According to the complainant, she picked up a stone from the road and hit Rajiv Kumar. Then Rajiv Kumar caught hold of her from her hair and a considerable number of hairs got pulled out. He had torn her clothes and molested her. When she raised noise, her husband Rajesh Kumar came there to save her and then Rajiv Kumar started beating her husband. Thereafter other members of family of Rajiv Kumar came, out of them Parveen Kumar, Nirdosh Kumar and Rakesh Kumar started beating the complainant and her husband. Nirdosh Kumar gave a danda blow on the head of Rajesh Kumar due to which blood started oozing out. Thereafter several people of the village came and saved complainant and her husband. According to the complainant she had made a call on No.100, the police came to the spot. Injured were removed to the hospital. According to the complainant, the motive for the incident was that Rajiv Kumar being a notorious boy had been keeping evil eye upon her, which she resisted, as such resulting in the incident.

After registration of the FIR, the matter was investigated. The police had challaned Rajiv Kumar only. Whereas remaining persons named in the FIR by the complainant were found to be innocent. During trial against Rajiv Kumar, an application under Section 319 Cr.P.C. was filed by the complainant for summoning Nirdosh Kumar, Parveen Kumar and Rakesh Kumar, as additional accused. That application was allowed by the trial Magistrate, vide order dated 7.6.2018. This order left the petitioners aggrieved and they have filed the present revision petition, challenging the said order, praying that the said order be set aside and application under

Section 319 Cr.P.C. filed by the complainant be dismissed.

I have heard learned counsel for the petitioners and have also gone through the record, including the impugned order and I do not find any merit in the revision petition.

It is well settled that scope of revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order under challenge. This is not the case here.

In the instant case, all the petitioners are specifically named. The incident is stated to have been taken place on 22.2.2017 at about 7.30 A.M. Thereafter the complainant injured had called the police to the spot by making a telephonic call. Statement of complainant was recorded by the police, in which she had specifically named all the assailants including the present petitioners. Though after registration of the FIR the matter had been enquired into by the police, and clean chit was given to the petitioners, but then the question arises as to whether the enquiry report by the police is binding upon the Court. The answer can certainly be not in affirmative.

Learned counsel for the petitioners submitted that during the enquiry, the police officer had got statement of several witnesses recorded and thereafter came to the conclusion that the petitioners were not involved in the incident and this report should have been taken into consideration by the trial Magistrate, which was not so done. Furthermore, the law on the subject was not properly appreciated while allowing the application and summoning the

petitioners as additional accused.

However, after going through the impugned order, I do not find myself in agreement with learned counsel for the revisionists. Learned trial Magistrate has reproduced Section 319 Cr.P.C. in the order and then interpreted it as applicable to the facts of the present case, in light of the case law. The relevant portions of the order are reproduced as under :-

“6. Reverting back to the case in hand, complainant Jaswinder Kaur wife of Rajesh Kumar in her statement made to the police Ex.P3 on 22.2.2017 with S.I. Kailash Bahadur has categorically named Nirdosh Kumar, Parveen Kumar and Rakesh Kumar as accused alongwith Rajeev Kumar @ Panda accused, who is facing trial in this case. Specific attributions have been made by the complainant in her statement Ex.P3 to the police against the proposed additional accused namely, Parveen Kumar, Nirdosh Kumar and Rakesh Kumar that they gave beatings to her as well as her husband Rajesh Kumar. Nirdosh Kumar gave danda blow on the head of her husband and as a result blood started oozing out from the head of her husband. When, stepped into the witness box as PW2, complainant Jaswinder Kaur categorically deposed that Rajeev Kumar started beatings her husband. Family members of

Rajeev Kumar namely Parveen Kumar, Nirdosh Kumar and Rakesh Kumar came at the spot and they also started beatings her husband. Nirdosh Kumar gave danda/stick blow on the head of her husband and blood started oozing from the head of her husband. Rajesh Kuamr, husband of complainant Jawinder Kaur, appeared as PW3 and specifically deposed that family members of Rajeev Kumar, Nirdosh Kumar, Parveen Kumar and Rakesh Kumar came and they started giving beatings to him and his wife. Nirdosh Kumar gave danda/stick blow on his head and as a result blood oozed out from his head. One Maninder Singh, alleged as eye-witness of the occurrence, also appeared as PW4 and deposed in his examination in chief that on 22.2.2017, he was present at his house. At about 7.30 A.M., he heard noise of quarrel. He came out from his house and saw that Rajeev Kumar @ Panda, Parveen Kumar, Nirdosh Kumar and Rakesh Kumar residents of village Tonga, were beating his uncle Rajesh Kumar and Aunt Jaswinder Kaur.

7. Although, the complainant has clearly spelled out the specific roles played by the proposed accused persons alongwith accused facing trial, yet, during investigation, the proposed accused

were found innocent and were not challaned along with accused facing trial. They were kept in column No.2 of the report under Section 173 Cr.P.C.

8. As per the medical evidence also Rajesh Kumar husband of complainant Jaswinder Kaur suffered head injury with blunt weapon along with other injuries with blunt weapon. Thus, the medical evidence also support the version of complainant for the purpose of present application.

9. In these all circumstances, I am of the considered opinion that the proposed accused persons, namely Nirdosh Kumar, Parveen Kumar and Rakesh Kumar are required to be summoned as additional accused in this case and should be tried together with the accused facing trial. Accordingly, by invoking the powers under Section 319 Cr.P.C., while allowing the application moved by prosecution, persons named therein as Nirdosh Kumar, Parveen Kumar and Rakesh Kumar are hereby ordered to be summoned as additional accused in this case.”

Thus the trial Court was aware of the fact that during investigation, proposed accused were found innocent and were not challaned along with accused facing trial. But considering all the facts and circumstances had recorded its subjective satisfaction that

Nirdosh Kumar, Parveen Kumar and Rakesh Kumar are required to be summoned as additional accused and should be tried together with the accused facing trial.

I do not find any illegality or infirmity with the said order, much less apparent on the face of it. The trial Court has exercised its discretion in a proper and judicious manner. No interference there with is called for by exercising revisional powers by this Court.

The revision petition is without any merit and is dismissed.

23.7.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No