

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17761-2016

DATE OF DECISION:-21.02.2019

HARNEK SINGH AND ORS.

...PETITIONERS...

V.

STATE OF PUNJAB

...RESPONDENT...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Ms. Pooja Chopra, Advocate,
for the petitioners.

Mr. Davinder Bir Singh, DAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., prayer has been made by the petitioners for setting aside order dated 18.11.2015 of the trial court (P-2), whereby, they have been summoned as additional accused upon the application of the prosecution moved under Section 319 Cr.P.C. and order dated 18.03.2016 (P-3) of revisional court, whereby their revision against the trial court order was dismissed.

Briefly, the bone of contention in between the petitioners, their co-accused and complainant-Hari Ram is a shop situated within the area of abadi deh (lal dora). According to the complainant, in the evening of 19.09.2011, 13 persons including the petitioners and 5 others, who are already facing trial, forcibly dispossessed him from the demised shop, of which, he was in possession. Consequently, FIR No.246 dated

registered at Police Station City Rajpura against them. During investigation, all the 8 petitioners were found innocent, whereas their 5 co-accused were sent to face trial by filing report under Section 173 (2) Cr.P.C. only under Sections 447, 427, 511, 506, 148, 149 IPC, deleting Sections 380 and 454 IPC. During the pendency of trial, prosecution moved an application under Section 319 Cr.P.C. to summon the petitioners as additional accused, which was accepted by the trial court, vide impugned order dated 18.11.2015 (P-2).

The petitioners have laid challenge to the aforesaid order in revision, but remained unsuccessful, as their revision, was too, dismissed vide order dated 18.03.2016 (P-3).

Learned counsel for the petitioners contends that question of dispossession of the complainant from the demised shop does not arise at all, because the civil suit for injunction filed by petitioners No.3 and 4, much prior to the lodging of the instant FIR has already been decreed in their favour on 06.09.2011. The appeal preferred by complainant against the said judgment has already been dismissed vide order dated 05.07.2013 (P-4). The said judgment has not been challenged by the complainant any further. Therefore, the same has attained finality. The police during investigation had found the petitioners innocent, therefore, placed them in column No.2 in final report under Section 173 (2) Cr.P.C. No new evidence has come on record against the petitioners. The story put forth by the complainant about his dispossession has already been found false by the civil court. Therefore, the petitioners ought not to have been

summoned as additional accused by the trial court.

On the other hand, learned State counsel resisted the petition and pleaded the legality and validity of impugned judgments of both the courts below.

Having given thoughtful consideration to the rival submissions, this Court finds merit in the instant petition for the reasons to follow:-

1. The petitioners' side has been declared in legal possession of the demised shop. Both the courts below have failed to appreciate the above aspect of the matter.

2. The trial court, while summoning the petitioners as additional accused did not consider the civil court judgment and decree, which was attached by the police with the final report under Section 173 (2) Cr.P.C.. Since, the possession over the site has been declared by civil court, in favour of the petitioners, therefore, at this stage, there was no prima facie case to summon the petitioners as additional accused.

Accordingly, the petition is accepted and impugned orders passed by both the courts below are set aside.

21.02.2019
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(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:
whether reportable:

Yes/No
Yes/No