

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

**Criminal Misc. No.M-3599 of 2015 (O&M)
Date of Decision: December 16, 2019**

Harsh Kalia

.....PETITIONER(s).

VERSUS

State of Punjab and another

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Bajaj, Advocate
for the petitioner (s).

Mr. Amitoj Singh Dhaliwal, DAG, Punjab.

Ms. Suminderdeep Kaur, Advocate for
Mr. Rajeev K. Kapila, Advocate
for respondent No.2.

SURINDER GUPTA, J.

This is petition filed under Section 482 Code of Criminal Procedure (for short-Cr.P.C.) seeking quashing of order dated 13.11.2014 passed by learned Sessions Judge, Kapurthala (Annexure P-5), whereby the revision petition filed by respondent No.2 against summoning order dated 07.12.2012 (Annexure P-4) passed by the trial Court in case FIR No.8 dated 15.01.2007 registered for the offences punishable under Sections 323,324,341,148 read with Section 149 of Indian Penal Code, at Police Station Bholath, District Kapurthala, was allowed.

Facts of the case as extracted from para 2 of the order passed by

learned Sessions Judge, Kapurthala, are as follows:-

“2. As per prosecution case, Harsh Kumar Kalia son of Tarsem Lal Kalia, resident of village Bholath suffered a statement before the police to the effect that he was a journalist, working at Bholath. On 15.01.2007 at about 6.30 p.m., he was going to his house from bazaar. On the way, he was stopped by Purab Khanna son of Surinder Kumar Patwari, who gave a push to him and the complainant fell on the road. In the meantime, younger brother of Purab Khanna alongwith Surinder Kumar patwari, Navyuvraj Khanna alias Babbu and Dalip Chand, all residents of Bholath also reached there. Purab Khanna was armed with base ball bat, Navyuvraj Khanna was having sharp edged weapon and other accused were armed with Dangs/ Sotas. Purab Khanna inflicted base ball bat blow on the right hand of complainant. Navyuvraj Khanna inflicted sharp edged weapon blow which hit on the left hand of the complainant. Dalip Chand and his sons gave dang blows to the complainant when he was lying on the road. In the meantime, Sukhwant Singh Takhar, M.C. and Sukhjinder Singh, resident of village Maksudpur also reached there, who saved the complainant from the accused persons. Accused fled from there alongwith their respective weapons. Injured was taken to the hospital and the present case was registered against the accused persons.”

During trial, petitioner moved an application under Section 319 Cr.P.C. for summoning Surinder Kumar Patwari (respondent No.2) as additional accused. He has alleged that Surinder Kumar Patwari was named in the FIR and it is necessary to summon him as additional accused. Earlier, he had moved application under Section 319 Cr.P.C. on 17.02.2007, which was dismissed being not pressed on 23.10.2009. On this application,

learned Magistrate, Kapurthala ordered summoning of Surinder Kumar Patwari (respondent No.2) with the observations as follows:-

“Perusal of the file shows that PW1 Harsh Kumar Kalia was examined completely on 10.12.2009. Despite lengthy cross examination, the learned defence counsel has failed to point out if Surinder Kumar was not present at the spot. Thus, keeping in view the facts and circumstances of the present case, it appears that Surinder Kumar Patwari was involved in the commission of alleged offence. As such, the application under Section 319 Cr.P.C. is hereby allowed and Surinder Kumar Patwari be summoned as additional accused.”

Surinder Kumar Patwari, respondent No.2 filed revision before the Court of Sessions, which was allowed by learned Sessions Judge, Kapurthala with the observations that order of learned Magistrate is totally illegal, against settled principles of law and the findings of trial Court are based on conjectures and surmises. While arriving at aforesaid conclusion, learned Court of Revision took note of the following facts:-

- (i) Investigating Agency had found Surinder Kumar Patwari as innocent as he was not found present at the place of occurrence. He being Govt. official was on duty on the day of occurrence with Karamjit Singh Patwari till 7.00 p.m. in village Miani Bhagupurian in connection with demarcation at that village.
- (ii) No specific role has been attributed to him.
- (iii) Statement of complainant Harsh Kalia is not supported and corroborated by medical evidence.
- (iv) FIR was registered in the year 2007 and 7 main witnesses have

The trial Court has not looked into this fact while summoning Surinder Kumar Patwari as additional accused.

Learned counsel for the petitioner has argued that respondent No.2 was named in the FIR. It was specifically stated by the complainant that respondent No.2-Surinder Kumar Patwari had come to the spot at the time of occurrence when petitioner was pushed and thrown on the ground by Purab Khanna, his son.

While appearing as PW1, petitioner Harsh Kalia has stated that respondent No.2 had hit him with his stick. In his cross-examination, he admitted that he had not got recorded in his statement dated 24.02.2010 before the Magistrate that Surinder Kumar and Dalip Chand gave him injuries with their *Dang* and *Sota*. While clarifying his statement, he stated that he got recorded in his statement that both had come present at the spot.

The question, which arises for consideration is as to what prompted learned Magistrate to summon respondent No.2 to face trial as additional accused on the application of petitioner under Section 319 Cr.P.C. Learned trial Court has observed that despite lengthy cross-examination, learned defence counsel has failed to point out if Surinder Kumar Patwari was not present at the spot. The above observation is fallacious and not sustainable for summoning respondent No.2 under Section 319 Cr.P.C. He was not facing the trial when the cross-examination of complainant was recorded. He had not engaged any counsel and there was no reason for the counsel, who was engaged by other accused to cross-examine the complainant on behalf of respondent No.2. As admitted by the petitioner, he had not stated that respondent No.2 caused him any injury.

Assertion of the petitioner in his examination-in-chief that respondent No.2 had attacked him with stick is an improvement on his earlier statement and learned trial Court has failed to look into the same.

Learned Court of revision has rightly appreciated the facts and evidence on record while accepting the revision and I find no reason to interfere with the well-reasoned order passed by learned Court of revision below.

This petition has no merits. Dismissed.

(SURINDER GUPTA)
JUDGE

December 16, 2019
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***