

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

CRM No.M-37492 of 2015 (O&M)

Date of Decision: January 29, 2019

Devender and others

...Petitioners

VERSUS

Dharampal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Deepender Singh, Advocate
for the petitioners.

Mr.Som Nath Saini, Advocate
for respondent No.1.

Mr.Sharad Kumar Yadav, DAG, Haryana
for respondent No.2-State.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. against respondents Dharampal and State of Haryana for quashing of criminal complaint No.360-RBT (19.10.2006/12.09.2013) titled as 'Dharampal vs. Brij Lal and others', summoning order dated 10.03.2014 passed by learned Judicial Magistrate Ist Class, Gurgaon, summoning the petitioners under Section 148, 149, 341, 323, 325, 379 and 506 IPC and also judgment dated 15.10.2015 passed by learned Addl. Sessions Judge, Gurgaon, vide which, revision petition filed by the petitioners against the summoning order has been dismissed.

Notice of motion was issued. Learned counsel for respondent

No.1 as well as learned State counsel appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that regarding the same occurrence, on the application of Dharampal for taking action against accused Brij Lal, Devender, Rohit, Kuldeep, Jai Narayan, Jai Bhagwan, Yogender, Mukesh and Ram Singh, FIR No.624 dated 13.08.2006 was registered. On the basis of this FIR, after investigation, challan was presented against Brij Lal, Yogender and Jai Bhagwan and other accused were found innocent. During the trial, an application under Section 319 Cr.P.C. was filed for summoning other accused named in the FIR. Learned JMIC, Gurgaon partly allowed that application by summoning Rohit and Ram Singh and dismissed the application qua Devender, Kuldeep, Jai Bhagwan and Mukesh vide order dated 25.08.2012, which is placed on record as Annexure P-4.

The complainant also filed criminal complaint, in question, against all the accused regarding the same occurrence and after the dismissal of the application under Section 319 Cr.P.C., learned JMIC, Gurgaon, summoned all the accused in the criminal complaint i.e. accused who are already facing trial in the FIR case and also present petitioners, vide impugned summoning order dated 10.03.2014.

The short point in the present case is whether after the dismissal of the application under Section 319 Cr.P.C., petitioners can be summoned in a complaint case by the Magistrate or not, when the trial is already going on against other co-accused.

Learned counsel for the petitioner relied upon the law laid

another, 2012(1) RCR (Criminal) 583, in which it is held that if a person is named in FIR in murder case but charge-sheet has not been filed, such a person cannot be summoned as accused on private complaint filed by aggrieved person under Section 200 Cr.P.C. The person could be summoned by following procedure under Section 319 Cr.P.C. The above-cited judgment fully applies to the facts of the present case.

In view of the law laid down by the Hon'ble Supreme Court in its judgment, I find that accused persons cannot be summoned on private complaint when already some of the accused are facing trial and qua other accused i.e. present petitioners, application under Section 319 Cr.P.C. has already been dismissed.

Keeping in view the above discussion and law laid down by the Hon'ble Supreme Court, I find that filing of the criminal complaint as well as passing of the summoning order and all the subsequent proceedings, are nothing but abuse of process of law and amounts to miscarriage of justice.

Therefore, finding merit in the present petition, the same is allowed. Criminal complaint No.360-RBT (19.10.2006/12.09.2013) titled as 'Dharampal vs. Brij Lal and others', summoning order dated 10.03.2014 along with all subsequent proceedings arising therefrom, are hereby quashed.

January 29, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No