

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

DATE OF DECISION:-27.03.2019

1. CRM-M-40353-2015

SUNITA AND ORS.

...PETITIONERS...

VERSUS

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS...

2. CRM-M-13593-2016

DHANI RAM AND ORS.

...PETITIONERS...

VERSUS

STATE OF PUNJAB AND ANOTHER

..RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. P.S. Ahluwalia, Advocate,
for the petitioners (in both petitions).

Mr. A.S. Gill, DAG, Punjab.

Mr. Bhavyadeep Walia, Advocate,
for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

CRM-32645-2016 in CRM-M-13593-2016

Through this application prayer has been made for correction in
the name of petitioner No.3 from Sham Lal to Ram Kumar.

Heard.

For the reasons explained in the application and considering the
fact that due to typographical mistake name of petitioner No.3 has

wrongly been typed as Sham Lal instead of Ram Kumar, same is allowed.

Amended memo of parties is taken on record. Be tagged at appropriate place.

Main cases

Through this judgment, above titled two petitions of the petitioners under Section 482 Cr.P.C. are being disposed of, assailing order of the trial court dated 12.05.2015 (P-7) and that of revisional court dated 13.10.2015 (P-9), affirming aforesaid order, whereby, the petitioners were summoned as additional accused upon application of the prosecution under Section 319 Cr.P.C.

According to the prosecution, in the day time of 18.08.2010, when complainant-Ravinder Pal was returning home, petitioners along with their accomplice namely Chander Mahesh and Kishan Chand having deadly weapons like gandasi, dandas etc. stopped him on the bridge near his house and caused injuries to him and his brother namely Davinder Pal.

On these broad allegations, after around two and half months from the date of occurrence, FIR No.277 dated 06.11.2010, under Sections 323, 324, 341, 506, 201 read with Section 34 IPC was registered against the petitioners and their accomplice aforesaid facing trial.

However, during investigation, petitioners were found innocent. As such, they were placed in column No.2 of the report under Section 173(2) Cr.P.C. filed in court, only recommending prosecution of Chander Mahesh and Kishan Chand, who were charge-sheeted accordingly under

Sections 341, 323, 324, 506 and 201 IPC. Immediately after examination

of PW-1 Davinder Pal brother of the complainant, the prosecution moved application under Section 319 Cr.P.C., to summon the petitioners as additional accused on the ground that they were specifically named in the FIR. Further, their complicity was again disclosed by the witnesses in their statements under Section 161 Cr.P.C. The said application after hearing both the sides was accepted. Petitioners were ordered to summon as additional accused vide order dated 06.11.2013 (P-5).

Being aggrieved, petitioners challenged the aforesaid order before revisional court, who accepting the same, set aside the aforesaid order dated 06.11.2013 of the trial court with direction to the trial court to pass a fresh order.

Consequently, the trial court again after hearing the parties, summoned the petitioners as additional accused vide order dated 12.05.2015 (P-7).

Being aggrieved again, petitioners again approached the revisional court, who, this time dismissed their revision, upholding the aforesaid order dated 12.05.2015 of the trial court.

At the outset, learned counsel for the petitioners withdraws this petition qua petitioner No.3 namely Ram Kumar.

Learned counsel for the petitioners contends that both the courts below failed to appreciate that as per initial medico legal examination report, complainant and his brother received only two simple injuries with blunt weapons. These injuries fell under Section 323 IPC, a non-cognizable offence. Therefore, the police initially did not register any FIR,

but registered the same after two and half months on receipt of medico legal report dated 24.09.2010 from Medical Board that the injury received by the complainant-Ravinder Pal was with a sharp edged weapon. Both the courts below have failed to appreciate that before summoning the petitioner as additional accused, it was incumbent upon them to see "more than sufficient" evidence to summon the petitioners as additional accused, which was not available on the record. The complainant got moved application under Section 319 Cr.P.C. through learned public prosecutor to summon the petitioners as additional accused to refrain them from deposing against them in trial, and take revenge. All the family members of Chander Mahesh and Kishan Chand were named as accused, being closely related, inasmuch as, they had deposed against complainant in a case got lodged by one Karnail Kaur under Section 452 IPC. Other litigation is also pending between the parties. In support of his contention, learned counsel placed reliance upon *"Hardeep Singh vs. State of Punjab and others"*, 2014(3) SCC 92 and *"Brijendra Singh and ors. vs. State of Rajasthan"*, 2017(3) RCR (Criminal) 374.

On the other hand, learned State counsel assisted by learned counsel for the complainant vehemently opposing the above submissions, pleading the legality and validity of impugned judgments and orders, contends that specific role was attributed to the petitioners at the time of lodging the FIR, which was further corroborated by injured PW-1 Davinder Pal, who also received injuries at the hands of the petitioners.

Having given thoughtful consideration to the rival submissions,

this Court finds both the petitions merit acceptance except petitioner No.3-Ram Kumar for the reasons to follow:-

It is impossible, rather unbelievable that 9 persons forming an unlawful assembly with deadly weapons with common intention and object would cause only two simple injuries to two persons. Therefore, this Court is of the considered view that aforesaid FIR was lodged after two and a half month of the date of occurrence with due deliberation with concocted version.

The story put forth by learned counsel for the petitioners that in a revengeful manner all the family members of accused, facing trial were intentionally named as accused, inasmuch as, Chander Mahesh and Krishan Chand had earlier deposed against brother of the complainant PW-1 Davinder Pal in a compliant case under Section 452 IPC, prosecuted by one Karnail Kaur, appeals to reason.

The petitioners during investigation were found false. No new evidence or any extra ordinary circumstance was brought by PW-1 Davinder Pal on record over and above his statement under Section 161 Cr.P.C. before police. The prosecution was required to prove "more than prima facie case" against the petitioners, who were found innocent during investigation for their summoning as additional accused in its application under Section 319 Cr.P.C.

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

Petitioner No.3-Ram Kumar is directed to appear before the trial

court within two weeks to face trial, failing which, the trial court would procure his presence through arrest warrants and keep him in custody till conclusion of trial.

27.03.2019
sonika

(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:	Yes/No
whether reportable:	Yes/No