

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

**CRR No.2882 of 2015 (O&M) and
CRR No. 3455 of 2015(O&M)
Date of Decision: 08.04.2019**

GURNEK SINGH @HARNEK SINGH @ NEKI

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

2nd case

VARINDER SINGH @ BINDRI

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. P.S. Miglani, Advocate for the petitioner.
Mr. Sandeep Kumar, DAG, Punjab.

MAHABIR SINGH SINDHU, J. (Oral)

This order shall dispose off the aforementioned petitions as both these petitions have arisen out of the common order.

Present petitions have been filed for setting aside the impugned order dated 07.07.2015 passed by learned Judge Special Court, Ludhiana, vide which the petitioners were summoned as an additional accused under Section 319 Cr.P.C.

It is argued by learned counsel for the petitioners that during investigation both the petitioners were declared innocent by DSP, Jagraon and even an internal inquiry was conducted against the said DSP by the higher police officer, but the same was found to be genuine and there was nothing wrong to the conclusion drawn by DSP while declaring the

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petitioners as innocent. Further contends that both the main accused i.e. Darshan Singh and Jagroop Singh have already been acquitted by learned Sessions Judge, Ludhiana, after conducting a full fledged trial vide judgment dated 21.10.2017.

The above factual position is duly acknowledged by learned State counsel on instructions from police official present in the Court, however, he opposed the prayer of the petitioners on the ground that they have wrongly been declared as innocent by the Police during investigation.

Heard both sides and peruse the paper book.

As per allegations of the prosecution, on 07.09.2013 ASI Amarjit Singh (PW5) along with other police officials conducted a raid in the house of above Darshan Singh at about 6.00 pm and found that one person carrying a plastic carry bag came from his house and he was later on identified as Darshan Singh. Police party apprehended said Darshan Singh but he raised hue and cry and consequently some neighbourers (males and females) came there and they tried to get release Darshan Singh from the police party. It is also alleged that both the petitioners were encouraging each other by calling their names and six-seven unidentified ladies were also with them who started manhandling with the police officials and successfully got released Darshan Singh from the police custody and thereafter all the accused ran away from the spot.

Copy of the judgment dated 21.10.2017 passed by learned Special Court, Ludhiana, whereby co-accused Darshan Singh and Jagroop Singh were acquitted has been placed on record and relevant part of paragraph 15 of the same reads as under:-

'It is also worth while to mention that in his cross examination PW5 ASI Amarjit Singh has stated

that no medical examination of any police official was got conducted. No torn uniform was taken into possession, no button of the uniform of any of the police official was taken into possession nor any statement of independent witness was recorded. PW5 ASI Amarjit Singh further stated in his cross examination that the police party was on a government vehicle and the police personnels were armed with weapons but no shot was fired in the air. These assertions on the part of PW5 ASI Amarjit Singh clearly prove that no force was used against the police party. If any force had been used or any of the police officials had been assaulted by the accused or others present at the spot, then the uniform of the some of the police officials might have been torn. However, as stated by PW5 ASI Amarjit Singh in his cross examination not even a button of uniform of any police officials was dislodged. Therefore, the story regarding use of force and assault by the accused and their accomplices for helping accused Darshan Singh run away from the spot appears to be quite improbable and a concocted one and the same cannot be relied upon to hold the accused guilty under Sections 353 & 186 of IPC nor the factum of recovery of 5 k.g. of poppy husk can be said to have been proved beyond the reasonable doubt.'

In view of the above, it is apparently clear that against the main accused i.e. Darshan Singh and Jagroop Singh neither the allegation of recovery of 5 kg of poppy husk has been proved nor the charges under Sections 353 and 186 IPC were substantiated, and therefore, both were acquitted by Learned Judge, Special Court, Ludhiana. Consequently, the pendency of the criminal proceedings against the present petitioners on the

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basis of impugned order dated 07.07.2015 as additional accused to face the trial under Sections 353 and 186 IPC, would be an exercise in futility and wastage of Court time and thus, the same deserves to be quashed.

Resultantly, the present petition is allowed. Impugned order dated 07.07.2015 passed by the Learned Judge, Special Court, Ludhiana is hereby set aside.

April 08, 2019
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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No