

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

CRR No.4014 of 2015 (O&M)
Decided on:- February 06, 2019.

Bhateri and others

.....Petitioners.

Versus

State of Haryana and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Akshay Kumar Jindal, Advocate
for the petitioners.

Ms. Mahima Yashpal, AAG, Haryana.

Mr. P.K. Hooda, Advocate
for respondent No.2.

HARI PAL VERMA, J. (Oral)

CRM-25037-2017

Prayer in this application filed under Section 482 Cr.PC is for placing on record the copy of judgment dated 25.10.2016 passed by learned Additional Sessions Judge, Panipat as Annexure P-8, whereby main accused Monu has been acquitted of the charges leveled against him.

The document Annexure P-8 is taken on record subject to all just exceptions.

CRM stands disposed of.

CRR No.4014 of 2015

Petitioners, namely, Bhateri, Satish Kabari and Suresh Gangania have filed present criminal revision against the order dated 24.08.2015 passed

by learned Additional Sessions Judge, Panipat, whereby on an application under Section 319 Cr.PC moved by the complainant, they have been summoned to face trial in the case bearing FIR No.34 dated 17.01.2015 under Sections 365 and 376 IPC registered at Police Station Model Town, Panipat.

Learned counsel for the petitioners has argued that except petitioner No.1 Bhateri, no other petitioner has been named in the FIR. Even in her statement dated 23.01.2015 under Section 164 Cr.PC, the complainant has not named the petitioners as accused, rather, she has stated that she had gone with Monu at her own will. However, she made another statement under Section 164 Cr.PC on 26.03.2015 thereby naming the petitioners.

Learned counsel for respondent No.2 has stated that after engaging him as his counsel, the respondent No.2 is not in contact with him.

Learned State counsel states that the police has already conducted investigation and rather, a cancellation report (Annexure P-5) has been filed. Moreover, the complainant has furnished an affidavit dated 28.01.2015 stating therein that she is no more interested to pursue the case.

I have heard learned counsel for the parties.

It is a conceded fact that the police has prepared a cancellation report (Annexure P-5) in the case and the complainant has also furnished an affidavit dated 28.01.2015, wherein she has stated that she is no more interested to pursue the case. Moreover, main accused Monu has already been acquitted by the trial Court vide judgment dated 25.10.2016 (Annexure P-8). Thus, this Court finds that there is no material on record on the basis of which

the petitioners could have been summoned to face trial under Section 319 Cr.P.C.

In *Pepsi Foods Limited and another Versus Special Judicial Magistrate and others-(1998) 5 Supreme Court Cases 749*, Hon'ble Supreme Court has held that summoning of an accused in a criminal case is a serious matter and the criminal law cannot be set into motion as a matter of course. The relevant observations made by Hon'ble Supreme Court in the said judgment read as under:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

In *Hardeep Singh Versus State of Punjab (2014) 3 SCC 92*, it has been held by the Apex Court that the degree of satisfaction for invoking

Section 319 Cr.P.C. should be of more than a prima-facie case, as exercised at the time of framing of charge, but short of satisfaction to an extent that evidence, if not rebutted, may lead to conviction of the person sought to be added as accused.

Therefore, this Court finds that the petitioners have been summoned by the trial Court without there being any material against them. Moreover, the complainant herself furnished an affidavit dated 28.01.2015 wherein she has submitted that she is no more interested to pursue the case. Thus when the complainant herself is not inclined to pursue her case, the chances of conviction of the accused in the case, are quite bleak. Thus no useful purpose would be served to summon the accused.

Accordingly, the present criminal revision is allowed and the impugned order dated 24.08.2015 passed by learned Additional Sessions Judge, Panipat is set aside.

February 06, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No