

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.878-2017

DATE OF DECISION:-21.02.2019

ROSHNI AND ORS.

...PETITIONERS...

V.

STATE OF HARYANA AND ANR.

...RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Rajesh Lamba, Advocate for the petitioners.

Mr. R.K. Makkar, Sr. DAG, Haryana.

Mr. Ankur Lal, Advocate for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

Through this petition challenge has been laid to order dated 02.02.2017 of the appellate court, whereby, petitioners have been summoned as additional accused on the application of the prosecution as well as complainant under Section 319 Cr.P.C.

Briefly, on the complaint of Raj Bala, FIR No.0833 dated 20.12.2015 was registered under Sections 323 and 506 IPC, at Police Station, Sector 10A, Gurgaon, on the allegations that on 16.12.2015, co-accused of the petitioners, namely, Dinesh @ Kallu gave a brick/hammer blow on her head. At that moment, petitioners No.1 and 2 had caught hold of her, whereas, petitioner No.3 and accused Thakur Dutt @ Ramesh were intimidating the complainant with dire consequences.

Learned counsel for the petitioners contends that according to the initial version of the complainant, petitioners No.1 and 2 had caught

hold of her after receiving a brick or hammer blow on her head, whereas,

while appearing as PW-3, she testified that brick or hammer blow was given by Dinesh @ Kallu after catching hold of her. So, there is major improvement in the complainant's version contrary to her earlier version, which had culminated into FIR. As per settled proposition of law, trial court ought to have more than prima facie satisfied before summoning the petitioners, but, it only prima facie satisfied it. Therefore, impugned summoning order is liable to be quashed. The trial court has given erroneous finding in para No.7 of the impugned judgment, while wrongly interpreting provisions of Section 319 Cr.P.C. In support of his argument, learned counsel for the petitioners has placed reliance upon the judgment of Hon'ble Supreme Court, titled as ***"Hardeep Singh vs. State of Punjab and ors."***

On the other hand, learned State counsel assisted by learned counsel for respondent No.2-complainant refuting the above submissions, contends that the petitioners were specifically named in the initial version by the complainant as well as while appearing as PW-3. There was no improvement in the complainant's version. If, there was any improvement as alleged that would be considered by trial court at the appropriate stage.

Having given thoughtful consideration to the rival submissions, this Court is not inclined to differ with the finding given by trial court in the impugned order dated 02.02.2017, inasmuch as, initial version of the complainant, which culminated into FIR is not contrary to her testimony in court as PW-3. The complainant has simply clarified her initial version in specific words, stating that petitioners had caught hold of her after

receiving brick/hammer blow. So, it cannot be inferred that the complainant as PW-3 made improvement to her initial version.

Undisputedly, petitioners were named in the FIR. Therefore, it cannot be said that petitioners have wrongly been summoned by the trial court on finding prima facie case against them after going through the statement of PW-3 Raj Bala. That apart, petitioners would get an opportunity to lead evidence in their defence to rebut the evidence of the prosecution.

More than prima facie satisfaction is a jugglery of words. Prima facie satisfaction of the court, in itself, is sufficient to proceed further. The trial court, in the instant case, in its wisdom, had prima facie satisfied before summoning the petitioners. This Court also finds a prima facie case to summon the petitioners as additional accused.

There is no dispute with the proposition of law laid down by the Hon'ble Apex Court in judgment, referred to above. However, this Court would like to add that the trial court, strictly in compliance of the aforesaid ruling, has satisfied itself before summoning the petitioners as additional accused.

In view of the discussion above, the instant petition is dismissed.

Any observation made in this order shall have no bearing on the merits of the case.

21.02.2019

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(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:

Yes/No

whether reportable:

Yes/No