

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

**CRR No.2444 of 2018 (O&M)
Decided on: 23.09.2019**

Sukhmander Singh Samra

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. S.P.S. Sidhu, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Harjinder Singh Mavi, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J.

Prayer in this revision petition is for setting-aside the order dated 11.05.2018 passed by the Additional Sessions Judge, Moga vide which the application filed by the petitioner under Section 319 of the Code of Criminal Procedure (in short 'Cr.P.C') for summoning respondent No.2 as an additional accused, was dismissed.

Brief facts of the case are that FIR No.187 dated 03.12.2015 under Sections 395, 308, 323, 34 of the Indian Penal Code (in short 'IPC') at Police Station Dharamkot was registered on the statement of Sukhmander Singh Samra that he is resident of U.S.A. and in the month of November, 2015, he had come to his village. His brother Baljinder Singh, who is also a resident of U.S.A. came to the village and on 02.12.2015 at about 08:00 PM, when they were present

at the house of Balwinder Singh, one of their relative Inderjit Singh had come to meet them and in the meantime, Malkiat Singh armed with iron chain of motorcycle, Bachitar Singh armed with iron rod, Jasvir Singh armed with iron pipe, Murti Kaur Sarpanch, armed with baseball bat, Chhinder Kaur armed with iron pipe, entered the house and Malkiat Singh raised a lalkara they teach them a lesson for not allowing them to pass through the streets and thereafter, they caused injuries to the complainant, Baljinder Singh, Jasdeep Singh and Inderjit Singh.

After framing of the charges, the trial Court recorded the statement of PW1 Sukhmander Singh Samra, who deposed on the version given in the FIR and was cross-examined by the accused party. Similarly, PW2 Baljinder Singh and PW3 Inderjit Singh also appeared and supported the prosecution version.

After recording the evidence of six prosecution witnesses, the application was moved under Section 319 Cr.P.C. for summoning Murti Kaur Sarpanch as an additional accused. The said application was dismissed by the trial Court by passing the following order:-

“5. No doubt, while setting the police machinery into motion vide ruqa Ex.P1 Sukhmander Singh alleged that at the time of incident Sarpanch Murti Kaur was accompanying rest of the accused and she was carrying a baseball bat with which she attacked him on his head and subsequently this statement was also reiterated upon oath thus allegations indicating participation of Sarpanch Murti Kaur in the alleged crime were made from which it appears as if Sarpanch Murti Kaur had also participated in the crime but it has rightly been urged by learned counsel representing the accused that the said application, if any allowed at this stage would cause great prejudice to

the rights of the accused and should have been filed at the initial stage of hearing when complainant Sukhmander Singh stepped into the witness box on 05.03.2018 to reiterate his own police statement upon oath. Learned counsel highlighted that before putting PW Sukhmander Singh and rest of the witness to cross examination he was made to understand that no such application is proposed due to which he went ahead and thus disclosed the defence taken by the accused and as such the application under Section 319 Cr.P.C. has been moved at an appropriate stage with a mala fide intention.

6. I have given a careful thought to these submissions. Complainant Sukhmander Singh and his brother PW Baljinder Singh are NRIs being American citizens. As many as six witnesses of the prosecution have already been examined. If at this stage, by invoking provisions of Section 319 Cr.P.C., an additional accused is summoned, not only the aforementioned six witnesses would have to be recalled to be examined in the presence of proposed accused, it would also cause a corresponding delay in disposal of the trial, thus causing prejudice to the interest of the accused who have already disclosed their defence while putting the aforesaid witnesses to cross-examination. Complainant Sukhmander Singh and his brother PW Baljinder Singh were present in India on 05.03.2018 and 12.03.2018 and could be examined promptly, but their recall may require asking these witnesses to travel to India from America entailing further delay though the accused have a right of speedy trial.

7. In view of the above said discussion this Court refrains from summoning Sarpanch Murti Kaur as an additional accused at this stage but at the same time a right is afforded to the complainant to bring an independent criminal complaint against Sarpanch Murti

Kaur as per law.

8. *With these observations the application under consideration is dismissed. Papers be tagged with the main case file.”*

Counsel for the petitioner has submitted that Murti Kaur was specifically named in the FIR with the allegations that she was carrying a baseball bat and caused injury to the complainant party. It is further submitted that PW1 Sukhmander Singh Samra, the complainant has specifically stated, while deposing on oath in the Court, that Murti Kaur caused an injury on his head.

Counsel for the petitioner has relied upon the MLR of the petitioner/complainant – Sukhmander Singh Samra to submit that injury No.5 is a lacerated wound on the parietal region of the skull and as per the opinion of the doctor, the weapon used was blunt. Counsel for the petitioner has, thus, argued that since the specific injury attributed to Murti Kaur, who is named in the FIR is corroborated by the medical version i.e. the MLR of the complainant, the trial Court has failed to appreciate this aspect and had passed the impugned order only on the ground that in case the application is allowed, the complainant Sukhmander Singh and his brother Baljinder Singh, who are residing in U.S.A. will have to travel to India and this will delay the trial.

In reply, counsel for the State assisted by counsel for respondent No.2 has submitted that the application has been filed at a highly belated stage and in case the application is allowed, a *de novo* trial will start.

After hearing the counsel for the parties, I find merit in the present revision petition. A perusal of the FIR, statement of PW1 –

Sukhmander Singh, PW2 – Baljinder Singh and PW3 – Inderjit Singh all victims/injured have clearly named Murti Kaur as one of the assailant, who was armed with a baseball bat (Slugger). PW1 Sukhmander Singh has specifically stated that Murti Kaur gave an injury on his head which is corroborated by injury No.5 of his MLR, therefore, in view of the well settled principle of law, there is more than prima facie evidence on record to summon Murti Kaur as an additional accused. The only reasoning given by the trial Court while dismissing the application under Section 319 Cr.P.C. is that in case the application is allowed, PW1 Sukhmander Singh and PW2 Baljinder Singh, who are residing in U.S.A. will have to come back to India for their deposition is no ground to reject the application as the counsel for the petitioner has given an undertaking that as and when they are required to appear as prosecution witness, they will travel to India on their own expenses and appear as a witness.

In view of the above, the present revision petition is allowed, the order dated 11.05.2018 is set-aside and the application filed under Section 319 Cr.P.C. for summoning Murti Kaur as an additional accused is allowed.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

23.09.2019
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No