

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

CRM No.M-34201 of 2016 (O&M)

Date of Decision: March 06, 2019

Gurjit Singh

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sarju Puri, Advocate
for the petitioner.

Mr.Dhurv Dayal, Sr.DAG, Punjab
for the respondent-State.

None for respondent No.2.

INDERJIT SINGH, J.

Petitioner Gurjit Singh has filed this petition under Section 482 Cr.P.C. against respondents State of Punjab and Gurmail Singh, for quashing of impugned order dated 20.01.2016 passed by learned Chief Judicial Magistrate, SBS Nagar, vide which the petitioner was summoned as additional accused under Section 319 Cr.P.C. and impugned judgment dated 22.07.2016 passed by learned Addl. Sessions Judge, SBS Nagar, vide which the revision petition filed by the petitioner was dismissed.

Notice of motion was issued. Learned State counsel appeared and contested the petition. Earlier, learned counsel for respondent No.2 was appearing but today, none has put in appearance on behalf of respondent

No.2.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that challan was presented against Mohinder Singh, Ajaib Singh, Lakhbir Singh, Sukhdev Singh and Gurjit Singh s/o Piara Singh in case FIR No.42 dated 26.05.2013 under Sections 451, 323, 448, 511, 427, 506, 148 and 149 IPC by the police of Police Station Sadar Banga. During the pendency of the trial, Gurmail Singh filed an application under Section 319 Cr.P.C. for summoning Gurjit Singh s/o Rashpal Singh as additional accused. It is mainly stated in the application that FIR was registered on the basis of statement of the complainant to the effect that on 26.05.2013 at about 2.00 p.m., when he was present in his shop, Lakhbir Singh, Mohinder Singh, Ajaib Singh, Gurjit Singh s/o Piara Singh, Gurjit Singh s/o Rashpal Singh and Sukhwinder Singh along with 5-6 unidentified persons entered into his shop illegally armed with dandas and sticks and inflicted injuries on his person and started damaging/breaking the articles kept in the shop. The FIR was registered also against Gurjit Singh s/o Rashpal Singh but he has not been challaned by the police. It is also stated in the application that complainant, while appearing as PW-1, has also deposed as per version given in the FIR.

Learned CJM, SBS Nagar, vide impugned order dated 20.01.2016 held that prima facie evidence brought on record by the complainant is sufficient to take cognizance against additional accused and thus, allowed the application and summoned Gurjit Singh s/o Rashpal Singh as additional accused. A revision was filed by the petitioner, which was

judgment dated 22.07.2016. Aggrieved from the above-said order and judgment, present petition has been filed.

From the record, I find that though name of present petitioner is mentioned in the FIR but during investigation, he has been found innocent and has not been challaned. As per complainant, injuries were given by all the accused, who were armed with dandas, sticks but as per State counsel, there is no MLR showing any injury on the person of the complainant as he has not got himself medico legally examined, which means that it is a no injury case. On specific query by this Court to learned State counsel and the Investigating Officer, who has brought the police file, whether there is any list of damaged articles in the shop or any damage report has been prepared or damaged articles were taken into police possession, the reply is in negative.

Already, challan has been presented against five persons. At this stage, in view of the fact that complainant, who was alleging injuries by all the accused but there is nothing on the record to show any injury except statement of the complainant, who has deposed as per FIR, without any material corroboration, I find that it does not appear to the Court, at this stage, that present petitioner is also involved in the commission of offence and he should be tried along with the accused already challaned. Mere mentioning of name in the FIR and then in the statement while appearing as a witness, is not sufficient, in the facts and circumstances of the present case, to summon the present petitioner as additional accused to face trial.

In view of the above discussion, I find that the impugned order and judgment passed by learned Courts below are not as per evidence and law and the same are liable to be set aside.

Therefore, finding merit in the present petition, the same is allowed. The impugned order dated 20.01.2016 passed by learned CJM, SBS Nagar, summoning the petitioner as additional accused and impugned judgment dated 22.07.2016 passed by learned Addl. Sessions Judge, SBS Nagar, dismissing the revision petition filed by the petitioner, are set aside.

However, nothing stated above, shall constitute my opinion on merits of the case.

March 06, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No