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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
10/1/2019 14:36
I attest to the accuracy and
authenticity of this document

CRR-9837-2018 (O/M)
Date of decision : 24.1.2019

Sharanjeet Singh alias Jimmy Petitioner (s)

Versus

State of Punjab and another Respondent (s)

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Veneet Sharma, Advocate,
for petitioner.

Ms. Sunint Kaur, AAG Punjab.

Mr. D.D. Singla, Advocate, for,
Mr. Kuldeep Singh, Advocate,
for respondent No. 2.

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KULDIP SINGH, J. (ORAL)

Impugned in present revision is order dated 6.10.2018, passed by learned Additional Sessions Judge, Sangrur, vide which present petitioner, namely, Sharanjeet Singh alias Jimmy alongwith Binder Singh, Sahibjit Singh alias Sabi, Mahinder Singh have been summoned as additional accused on an application filed under Section 319 Cr.P.C. to face trial for offences under Sections 148, 307, 324, 325, 323, 506, 149 IPC has been allowed. Non bailable warrants of arrests to procure their presence have been issued.

As per allegations made by complainant, namely, Varun Madan, in FIR, he alongwith his father is running Vikram Hotel, near Bus Stand. On 11.12.2015, accused Jimmy, Bhinder Singh, Vicky, who are owners of English and Country made liquor vends for the said year of circle Sunam, and Chajli alongwith them 4/5 unknown persons came there on their Scorpio and Bolero vehicles. All of them were having naked swords in

their hands. On their arrival, accused went to Tavern of his paternal uncles Ashok Kumar and Prem Kumar and told them that they are bringing liquor from outside and selling it in city and causing loss to them. Thereafter, they started beating Ashok Kumar. Ashok Kumar in order to save himself rushed into hotel of complainant. All accused with naked swords entered the hotel where father of complainant was already sitting. Then, one unknown persons attacked his uncle Ashok Kumar with a sword with an intention to kill him. Complainant in order to save his uncle intervened and sword hit between his thumb and index finger. Complainant raised alarm. Then all accused went out. Complainant was taken to hospital. Then, it is alleged that accused armed with naked swords and dandas went to dhaba of his paternal uncle Kallu alias Jagdish and one unknown person attacked his paternal uncle Jagdish with a sword on left side of his head. Other persons also gave injuries to other parts of body of his uncle Jagdish. When his servant Kamal came forward, he was also given injury with sword from reverse side. On the basis of said FIR, investigation was carried out. Police ultimately submitted report under Section 173 Cr.P.C. Infact, two of accused, namely, Bhupinder Singh alias Bhinder and Jimmy were found innocent. Police presented challan against six persons and two other accused, who are stated to be still absconding.

During trial, complainant Varun Madan, was examined in chief wherein he named unknown persons in addition to present petitioner, stating that all accused were armed with swords, sticks and iron rods. Jimmy, Bhinder Singh and Vicky were wine vendors of Sunam and Chajali of circle Sunam. Jagdeep Sing alias Babi raised exhortation not to spare Ashok Kumar and Prem Kumar as they are causing loss to them. His uncle ran towards his hotel. Then, Chamkaur Singh alias Vicky gave sword blow

towards head of Ashok Kumar and when complainant Varun Madan intervened to save his uncle Ashok Kumar, sword hit his left hand in between thumb and index finger. He further claims that Sulakhi attacked him with iron rod on his left shoulder. He raised alarm. Regarding second incident, he stated that all accused inflicted injuries on the person of his uncle Jagdish alias Kallu with swords and rods on his head with intention to kill him. His servant Kamal was also beaten up. On the basis of statement made by complainant in examination in chief, impugned order was passed.

I have heard learned counsel for petitioner, learned State counsel, learned counsel for respondent No. 2 and have also carefully gone through file.

Perusal of statement made by complainant in examination in chief, even if taken as gospel truth, would show that though he claimed that present petitioner Sharanjeet Singh alias Jimmy was accompanying remaining accused, and was allegedly carrying naked sword, but he did not inflict any injury. He even not raised exhortation to fellow accused, though he alongwith Bhinder Singh and Vicky are stated to be wine contractors and adversely affected by alleged sale of liquor at lower price in city by complainant, his father and his uncles.

In the FIR, 4 persons were named alongwith 4/5 unknown persons. Therefore, total number of persons at the most will come to 9. In the present case, 6 persons have already been challaned and trial Court in its wisdom summoned 4 more persons, making number of accused little more than that what is alleged in initial complaint. Police after investigation had come to conclusion that petitioner was not present at the time of commission of crime. Trial Court did not take into account medical evidence and finding of police to come to a different conclusion. Trial

Court just relied upon statement of complainant as gospel truth and passed summoning order. Though trial Court could do so, but rule of prudence require some material. Whether a person was present at spot or not, which now-a-days can be established from scientific evidence. Trial Court should have examined all aspects to see whether petitioner was present at spot and actually participated in crime or complainant had tried to caste net more wider and involve all persons whom he suspect to be his enemies. In a similar case, titled as Brijendra Singh and others Versus State of Rajasthan, 2017 (3) RCR (Criminal) 374, Apex Court observed as under :-

'15. This record was before the trial Court. Notwithstanding the same, the trial Court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the 'evidence' recorded during trial is nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of case. No doubt, the trial Court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial Court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial Court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial Court and

expressing agreement therewith, nothing more has been done.
Such orders cannot stand judicial scrutiny.'

In the present case, no overt act is attributed, except that petitioner was accompanying other accused and carrying naked sword, but he did not do anything. He was found innocent by police during investigation as he was not found at spot. Therefore, impugned order is not sustainable in eyes of law. Revision is allowed. Impugned order qua petitioner is set aside.

(KULDIP SINGH)
JUDGE

24.1.2019
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No