

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 06.02.2020

1. CRM-M-25564-2017 (O&M)

Malwinder Singh

.. Petitioner

Vs.

State of Punjab and another

..Respondents

2. CRM-M-41252-2017 (O&M)

Chamkaur Singh

.. Petitioner

Vs.

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Abhishek Goyal, Advocate for
for the petitioner in CRM-M-25564-2017 and
for respondents in CRM-M-41252-2017.

Ms. Monika Jalota, DAG, Punjab.

Mr. Nandan Jindal, Advocate
for respondent No.2 in CRM-M-25564-2017 and
for the petitioner in CRM-M-41252-2017.

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Manoj Bajaj, J. (Oral)

Accused Malwinder Singh has filed CRM-M-25564-2017, challenging the order dated 02.06.2017 (Annexure P-6) passed by Id. Addl. Sessions Judge, Sangrur, whereby he was summoned as an additional accused under Section 319 Cr.P.C. in case FIR No.141 dated 19.10.2014, under Sections 451, 355, 323, 324 and 34 IPC, registered at Police Station Amargarh, District Sangrur. Whereas, Chamkaur Singh (complainant) has filed CRM-M-41252-2017 for challenging the aforesaid order dated 02.06.2017, whereby his application for summoning Amarjit Kaur was declined.

The FIR in the present case was registered on the statement of complainant Chamkaur Singh, wherein it was stated that on 18.10.2014 at

5:30 p.m., when he along with his wife Kamalpreet Kaur was working in their plot, Malwinder Singh, Dhanwinder Singh, Harpinder Kaur and Amarjit Kaur came there with deadly weapons and they attacked them. Dhanwinder Singh inflicted gandas blows on his right and left shoulders from the reverse side. Harpinder Kaur inflicted fist blows on the mouth of his wife Kamalpreet Kaur, who fell down on the ground and then accused Malwinder Singh tried to inflict sword blow to his wife and in order to save herself, she raised her left arm, and the blow landed on her left wrist. While she was lying on the ground, Harpinder Kaur gave kick blows on the abdomen of his wife and Malwinder Singh put his foot on her breast and also torn off her shirt. When complainant and his wife raised hue and cry, then the assailants ran away from the spot along with their respective weapons, while Amarjit Kaur kept exhorting. On these broad allegations, the present FIR was registered.

After completion of investigation, the final report was filed, wherein accused Dhanwinder Singh and Harpinder Kaur were challaned, whereas Malwinder Singh and Amarjit Kaur were found innocent. After framing of the charges, the trial commenced and the prosecution witness Chamkaur Singh (complainant) testified before the Court as PW-2. After recording the examination-in-chief (partly), an application was moved by prosecution under Section 319 Cr.P.C. for summoning accused Malwinder Singh and Amarjit Kaur as additional accused to face trial in the above FIR. The trial Court proceeded to dismiss the application vide order dated 16.03.2017 and aggrieved against the said order, the revision petition was filed before the Additional Sessions Judge, Sangrur, which was partly allowed by summoning Malwinder Singh as additional accused, whereas the

summoning of Amarjit Kaur was declined.

Learned counsel for the petitioner (Malwinder Singh) contends that the trial Court while dealing with the application, examined the case carefully and proceeded to dismiss the same. He contends that the FIR was registered against 4 accused, namely, Dhanwinder Singh, Harpinder Kaur Malwinder Singh, Amarjit Kaur. However during investigation, Malwinder Singh and Amarjit Kaur were found innocent and were accordingly placed in column No.2. It is contended that the enquiry conducted by DSP, Malerkotla was relied upon by the trial Court while refusing to exercise the power under Section 319 Cr.P.C., whereas the revisional court wrongly proceeded to allow the application qua petitioner Malwinder Singh. He submits that the order passed by the ld. Additional Sessions Judge, Sangrur warrants interference by this Court as there is no convincing material for exercise of power under Section 319 Cr.P.C. in the present case qua petitioner Malwinder Singh. He prays that the impugned order dated 02.06.2017 be set aside and the application filed by the prosecution under Section 319 Cr.P.C. be dismissed and the order passed by the trial Court be restored.

Learned counsel appearing on behalf of the complainant (Chamkaur Singh) has argued that from the very beginning, the case of complainant Chamkaur Singh is crystal clear and according to him, accused Malwinder Singh participated in the crime and inflicted injuries upon him and his wife. In the said occurrence, his co-accused also participated, who were also armed. He has prayed that the revisional Court has carefully and minutely examined the material on record before allowing the application.

It is further prayed that as per the statement of PW-2, presence of Amarjit

Kaur is also mentioned at the place of occurrence and, therefore, she also deserves to be summoned as an additional accused. He submits that the petition filed by petitioner Malwinder Singh be dismissed and the petition filed on behalf of Chamkaur Singh may kindly be allowed by summoning Amarjit Kaur as additional accused.

After hearing learned counsel for the parties, this Court finds that the order passed by the trial Court is based upon the material collected by prosecution during investigation as reliance was placed upon statement under Section 161 Cr.P.C. and the enquiry conducted by DSP, Malerkotla. The trial Court proceeded to observe that in view of the enquiry, no case is made out for summoning Malwinder Singh and Amarjit Kaur as co-accused, as they did not participate in the crime, though their presence is recorded at the place of occurrence. This Court finds that the approach adopted by the trial Court is apparently erroneous in law. To exercise the power under Section 319 Cr.P.C., the Court has to examine the evidence on record to ensure whether a case is made out for summoning the person as a co-accused, who has not been sent to face trial. The trial Court has not at all touched the testimony of complainant PW-2 Chamkaur Singh and, therefore, Malwinder Singh cannot derive any benefit of this order.

This Court is of the opinion that the revisional Court has carefully gone through the material on record, particularly the evidence of Chamkaur Singh (PW-2), while reversing the order passed by the trial Court by examining his statement. It was testified by him before the Court that accused Malwinder Singh was not only present at the spot, but was armed with kirpan and caused injuries to his wife Kamalpreet Kaur. It may be added here that the revisional Court has examined the role of both these

persons, Malwinder Singh and Amarjit Kaur, independently and proceeded to dismiss the application of prosecution qua Amarjit Kaur on the ground that she is 80 years old and it seems improbable that she was involved in the crime. Even as per the complainant, the only role attributed to her was of exhortation.

In view of the above, this Court does not find any reason to interfere with the well reasoned order passed by the revisional Court. Resultantly, both the petitions filed by the petitioners are dismissed.

06.02.2020
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No