

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

CRM-M-4786-2022

Date of Decision: 07.02.2022

Avtar Singh @ Abhi and Anr.

.....Petitioners

Vs.

State of Punjab

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Vishal Sharma Vasudeva, Advocate
for the petitioners.

Mr. Saurav Khurana, DAG, Punjab.

Case heard via video conferencing.

AMOL RATTAN SINGH, J. (Oral)

By this petition, the petitioners seek quashing of FIR No.0318, dated 30.10.2019, registered at Police Station Model Town, District Hoshiarpur, alleging therein the commission of offences punishable under the provisions of Sections 307, 326, 341, 148, 149 and 34 of the IPC (wherein offences under Sections 308 and 323 of the IPC were added later on), as also all other subsequent proceedings arising therefrom.

Learned counsel for the petitioners submits that even as per the inquiry/investigation conducted, by the Superintendent of Police (Investigation), vide his report dated 23.09.2020 (Annexure P2), it was found that the incident that took place on 27.10.2019, was one that involved Harbhajan Singh alias Bikka, Jugnu, Jyoti and Gopi Ramgarhia; and that Manpreet Singh and petitioner No.1, who is the son of Harbhajan Singh, and petitioner No.2 who is his mother, were not found to be involved.

He therefore submits that even in the report submitted under Section 173 Cr.P.C., they were not named as accused.

However, upon an application under Section 319 of the Code of Criminal Procedure having been filed by the Additional Public Prosecutor, eventually the trial court summoned the petitioners, holding as follows:-

- “7. The Court is also alive to the proposition laid down by the Hon'ble Apex Court in **Hardeep Singh Vs. State, 2014 (1) RCR (CrL) 623**, to the effect that while allowing application under Section 319 Cr.P.C., the court must record a finding that evidence which has come on record is not mere re-recording of statement made before the police under Section 161 Cr.P.C. but that some cogent and reliance evidence should come on record.*
- 8. The Hon'ble Apex Court, further, while discussing the material against a person not named as an accused has observed that materials coming before the Court in the course of enquiries can be used for corroboration of the evidence recorded in the Court after the trial commences, for exercise of power under Section 319 Cr.P.C.*
- 9. The instant case is, however, a case in which complainant Manpreet Singh named Rani W/o Harbhajan Singh and Avtar Singh son of Harbhajan Singh, as participants in the crime. Though, admittedly no scientific enquiry has been conducted regarding the role of said two persons in the occurrence, at the time of filing the challan.*
- 10. From the evidence of PW2 Manpreet Singh recorded during the trial it is established that a prima facie case is made out against Rani W/o Harbhajan Singh and Avtar Singh son of Harbhajan Singh, under Section 307, 308, 323, 341, 148, 149, 34 IPC. As such, this application is hereby allowed and it is ordered that the above said persons namely Rani W/o Harbhajan Singh and Avtar Singh son of Harbhajan Singh are ordered to*

be summoned as an additional accused through non-bailable warrants of arrest for 24.01.2022.”

He submits that the complainant simply testified in terms of his original statement only so that his case/the case of the prosecution is not stand weakened before the trial court; and otherwise the petitioners were not present at the spot at the time of the occurrence.

It is also to be noticed that upon query, learned counsel has submitted that the charge is still to be framed by the trial Court after the petitioners having been summoned.

Having considered the matter, in view of what has been observed by the trial court, which I find no fault with presently at least as regards the summoning of the petitioners and therefore I would find no reason simply on the basis of the report of the Superintendent of Police, (but with the complainant having testified as he did before the trial court), that the impugned order should be interfered with.

However, it is made absolutely clear that if upon filing any appropriate application before the trial court, the said court finds that the petitioners do not deserve to be charged (or do deserve to be charged on merits), it would pass appropriate orders accordingly, regardless of any observations made in this petition.

With the aforesaid observations, this petition is disposed of.

07.02.2022

Sunil Devi

**(AMOL RATTAN)
JUDGE**

Whether speaking/reasoned
Whether Reportable

: YES/NO
: YES/NO