

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

201.**CRR No.147 of 2020 (O&M)**

Date of Decision:05.12.2023

Rajinder Singh @ Raju Khalsa and another

... Petitioners

Versus

State of Punjab and another

... Respondents

2. CRR No.955 of 2020 (O&M)

Lakhwinder Kaur

... Petitioner

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Tarunveer Vashist, Advocate
for the petitioners in CRR No.147 of 2020.

Mr. Shubham Tandon, Advocate
for the petitioner in CRR No.955 of 2020.

Ms. Navreet Kaur Barnala, AAG, Punjab.

Mohd. Yousaf, Advocate
for respondent No.2 in CRR No.147 of 2020.

HARPREET SINGH BRAR, J. (ORAL)

1. By this common order, both the revision petitions are being disposed of, as the issue involved therein is similar. However, for the sake of brevity, facts are being culled out from CRR No.147 of 2020.

2. The petitioners have filed the present revision petition seeking quashing of the impugned order dated 14.10.2019 passed by the learned Additional Sessions Judge, Sangrur vide which the petitioners have been summoned under Section

193 Cr.P.C. to face trial in FIR No.137 dated 22.05.2019 under Sections 302, 365, 342, 34 IPC registered at Police Station Dhuri, Sangrur.

3. Succinctly, the facts of the case are that the present FIR was lodged on the statement of complainant-Manpreet Singh on the allegations that on 22.05.2019 at about 6.30 PM, the complainant and his father Kulwant Singh had gone to inspect their newly constructed house and when they were standing in the street near their house, Bhag Singh along with his son Lakhbir Singh, Sarabjit Kaur, Lakhwinder Kaur, Raju Khalsa and Pal Singh, who were co-villagers came there. Bhag Singh and his son Lakhbir Singh were armed with rods and Lakhwinder Singh was having a wooden stick; whereas others were armed with rods and sticks. Finding them standing in the street, the accused persons started abusing and threatening them. They forcibly took father of the complainant to the house of Bhag Singh. The complainant tried to save his father and raised alarm, on which co-villagers gathered on the spot. However, 50 minutes thereafter, they threw his father Kulwant Singh on the road in injured condition. In the meantime, his mother Bhupinder Kaur and grandmother Gurdev Kaur also came there. While they were taking injured-Kulwant Singh in the vehicle of Bhagwant Singh @ Bhappa to admit him to the Civil Hospital, Dhuri, he told that Raju Khalsa and Pal Singh gave rod blows on his head. On 21.05.2019, his condition deteriorated and he was referred to the PGI, Chandigarh. Thereafter, he was shifted to Government Hospital, Sector 32, Chandigarh where he died due to the injuries suffered by him. The motive behind the occurrence is that they were having a dispute regarding common wall with Bhag Singh and due to that, all accused persons had given beatings to father of the complainant. During investigation, petitioners herein were found innocent and therefore, they were put

in column No.2, however, the learned trial Court has wrongly and erroneously summoned them to face trial under Section 193 Cr.P.C. vide impugned order.

4. Learned counsel for the petitioner *inter alia* contends that occurrence had taken place on 20.05.2019 at about 6.30 AM and the FIR was lodged on 22.05.2019 i.e. after a delay of two days. The petitioners are sought to be involved on the basis of hear-say evidence. On 23.05.2019, SHO of the concerned police station along with police party conducted investigation and also gave information through the public address system installed in the Gurdwara of the village and called the villagers to verify the veracity of the allegation in presence of the complainant. The police recorded the statement of the respectable of the village namely Sukhdeep Singh, Surjit Singh, Gulzar Khan, Bhim Singh, Gurdev Singh, Labh Singh, Harnek Dass and also Bhagwant Singh @ Bhapa in whose vehicle, deceased-Kulwant Singh was taken to the hospital under Section 161 Cr.P.C., which are annexed collectively with the present petition as Annexure P-3. On the basis of open and secret investigation, the petitioners namely Rajinder Singh @ Raju Khalsa and Savinder Singh @ Pal Singh in CRR No.147 dated 2020 were found to have not participated in the alleged incident and petitioner-Lakhwinder Kaur in CRR No.955 of 2020 was not found present in the village at the relevant time. A perusal of the statement of Bhagwant Singh @ Bhapa, who was driver of the vehicle in which the deceased was taken to hospital, clearly indicates that the deceased Kulwant Singh did not disclose name of any person, who caused injuries to him. The statement dated 23.05.2019 is available on record as Annexure P-4.

5. Learned counsel for the petitioner further contends that as per the medical report of the deceased (Annexure P-5), cause of death given is sudden cardiac arrest along with head injury and history of injury in medical record is mentioned

as result of accident. On the head, only one injury i.e. Injury No.15, which is diffuse swelling in occipital region was recorded.

6. Per contra, learned State counsel and counsel appearing for respondent No.2-complainant in CRR No.147 of 2020 submit that names of petitioners are specifically mentioned in the statement made by the complainant to the police that all the accused including petitioners had dragged his deceased father inside the house of Bhag Singh and inflicted injuries on his person and thereafter, had thrown the deceased in the street.

7. Having heard learned counsel for the parties and after going the record of the case, it transpires that the learned trial Court has summoned the petitioners under Section 193 Cr.P.C. without evaluating the evidence and assessment of the material available against the persons sought to be summoned and then adjudging whether such material, more or less, carry the same weightage and value as has been testified against those who are already facing trial. A two Judge Bench of the Hon'ble Supreme Court in **Juhru and others Vs. Karim and another (2023) 5 SCC 406** speaking through Justice Surya Kant, has held as under:-

“16. It is, thus, manifested from a conjoint reading of the cited decision that power of summoning under Section 319 CrPC is not to be exercised routinely and the existence of more than prima facie case is sine qua non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 CrPC, and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weightage and value as has been testified

against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 CrPC ought not to be invoked.

8. After conducting a thorough investigation, the investigating agency found that petitioners namely Rajinder Singh @ Raju Khalsa and Savinder Singh @ Pal Singh in CRR No.147 dated 2020 were found to have not participated in the alleged incident and petitioner-Lakhwinder Kaur in CRR No.955 of 2020 was not found present in the village at the relevant time and therefore, their names were put in column No.2. The Hon'ble Supreme Court ***Brijendra Singh Vs. State of Rajasthan 2017 (3) RCR (Criminal) 74*** has laid down the ratio that the trial Court is required to go through the material attached with the final report under Section 173 Cr.P.C. on the basis of which the accused were declared innocent.

9. The FIR is not an encyclopedia and mere statement of the complainant reiterating the contents of FIR/complaint not substantiated by any credible material, cannot be a ground to invoke the power to summon an additional accused under Section 193 Cr.P.C. A perusal of the impugned order clearly indicates that the trial Court has not gone into the statements of witnesses attached with the final report before passing the impugned order, much less, bereft of any reasoning that the trial court finds that there was some "evidence" available against the petitioners herein on the basis of which it can be gathered that they appear to be guilty of the offence and the said evidence can be utilised for corroboration and to support the allegations levelled in the FIR.

10. In view of aforesaid facts and circumstances and without commenting on the merits of the case, the impugned orders dated 14.10.2019 are set aside and the matter is remanded back to the trial Court to consider the same afresh after

making proper assessment of the material attached with the final report filed under Section 173 Cr.P.C.

- 10. Both the petitions stand disposed of in above terms.
- 11. Pending misc. applications, if any, also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

December 05, 2023
Pankaj*

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