

CRR-236-2020 (O&M)

2023:PHHC:061202

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

CRR-236-2020 (O&M)

DATE OF DECISION:-28.04.2023

Gurjant Singh and another

...Petitioners.

vs.

State of Punjab and another

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ashok Bhardwaj, Advocate,
for the petitioners.

Mr. V.K. Gupta, AAG, Punjab.

Mr. Gurbir Singh Sidhu, Advocate for
Mr. Vikas Arora, Advocate,
for respondent No.2.

HARKESH MANUJA, J. (Oral)

1. By way of present revision petition, challenge has been made to an order dated 04.01.2020 passed by the court of learned Additional Sessions Judge, Sangrur, whereby, an application filed under Section 319 Cr.P.C. for the purpose of summoning the petitioners as additional accused, has been allowed.

2. Facts of the case are that the petitioners besides few others were arrayed as accused(s) in FIR No.60, dated 13.04.2019, under Sections 307, 323, 324, 325, 341, 506, 148 and 149 IPC, registered at Police Station City-I, Sangrur, on a complaint made at the instance of one Raj Kumar. Upon investigation, petitioners having been found innocent were placed in column No.2, however, during trial, injured-Rafi Kumar appeared as PW-1

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implicating the petitioners, followed by filing of an application under Section 319 Cr.P.C. seeking summoning of petitioners as additional accused(s). The trial court vide order dated 04.01.2020, allowed the aforesaid application, thereby summoning the petitioners as additional accused.

3. By way of present revision petition, the aforesaid order dated 04.01.2020 has been challenged.

4. At the outset, learned counsel for the petitioners does not want to press the present petition qua petitioner No.2, with liberty to raise all the pleas available to her at an appropriate stage during trial.

5. Referring to the statement of injured-Rafi Kumar, who appeared as PW-1, learned counsel for the petitioners submits that no specific role has been attributed to petitioner No.1 in the entire incident, except the allegations of lalkara and, as such, the learned trial court exceeded its jurisdiction while entertaining the application moved at the instance of prosecution for the purpose of summoning petitioner No.1 as additional accused. He further submits that petitioner No.1 was rightly exonerated and placed in column No.2 upon thorough investigation by the police, there being no prima facie evidence available against him.

6. On the other hand prayer made in the present petition has been strongly opposed by learned State counsel assisted by Mr. Gurbir Singh Sidhu, Advocate representing complainant-respondent No.2 while submitting that a specific role has been attributed to petitioner No.1 in the statement of PW-1. It has also been submitted that even in the FIR, a specific attribution has been there as regards petitioner No.1 and thus,

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learned trial court upon proper appreciation of the statement made by injured- Rafi Kumar (PW-1) and the other evidence available on record, rightly summoned petitioner No.1 as additional accused.

7. I have heard learned counsel for the parties and gone through the paper book, I find substance in the submissions made on behalf of petitioner No.1.

8. Relevant portion of statement made by PW-1 Rafi Kumar (injured), wherein, he refers to the role of petitioner No.1 is reproduced hereunder:-

“Then Gurjant Singh and his wife and mother of Prem Singh raised lalkara that today I should not be spared then Gurpreet Singh @ Bhairo and Prem Singh gave Dah and Kulhadi blow continuously for two times on my right leg and below right knee and Balkar Singh and Gurmukh Singh gave a blow of rod each on my right leg then Vijay Kumar and Malkiat Singh @ Jija s/o Gurjant Singh and Roop Singh gave Dah, rod and stick blows on my left leg and I was writhing in pain while lying on the ground, in the meantime my brother Raj Kumar came there who raised the alarm of “Na Maro Na Maro”. Upon which all the accused ran away from the spot alongwith respected weapons given threats to kill me and they were further remarking that now you will remain on the cot for the remaining life and had not left me able to walk throw out the life.”

From the perusal of the aforesaid portion of the statement of PW-

1-Rafi Kumar, except lalkaras, no specific attribution or specific role of Gurjant Singh (petitioner No.1) has been disclosed, which thus, apparently falls short of the settled parameters laid down by the Hon'ble Supreme Court for the purpose of invoking jurisdiction under Section 319 Cr.P.C. which entails the applicability of crucial test of more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un-rebutted, would lead to conviction. It appears that the trial court while passing the impugned order failed to take

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into consideration the aforesaid legal specifications at the time of deciding the application. There being no reliable evidence available on record against petitioner No.1, the learned trial court committed an error of law while passing the impugned order while summoning him as an additional accused.

9. In view of the discussion made herein above, the present petition qua petitioner No.1 is allowed and order dated 04.01.2020 passed by the court below is set aside qua him, whereas, petition qua petitioner No.2 is dismissed being not pressed with liberty as prayed for.

28.04.2023
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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No