

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

234

CRM-M-16648-2018

Decided on : 01.05.2023

Jaswinder Kaur & Anr.

. . . Petitioners

Versus

State of Punjab & Anr.

. . . Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Harshit Jain, Advocate for the petitioners

Mr. H.S. Sullar, Sr. DAG, Punjab

None for respondent No.2

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 482 of Cr.P.C. for quashing of order dated 23.03.2018, Annexure P-2, passed by the Additional Sessions Court, Sangrur dismissing the revision filed against the order dated 20.09.2017, Annexure P-1, passed by Judicial Magistrate, 1st Class, Dhuri vide which the petitioners have been summoned under Section 319 Cr.P.C. as additional accused in case FIR No. 184 dated 19.10.2015 registered under Section 326, 325, 324, 323, 342, 506, 201, 34 IPC at Police Station Sadar Dhuri, District Sangrur.

2. Shorn of unnecessary details, the facts are that the accused-petitioners and complainant-respondents had some dispute regarding the passageway of their fields, which were adjacent to each other. Malkit Singh, brother of the complainant was restrained by co-accused, namely Rupinderjit

Singh and Harinder Singh, when complainant came on the spot and requested them to resolve any disputes peacefully. Above named co-accused later went to the house of the complainant and raised lalkaras and threatened his family. When Sapinder Singh, nephew of complainant was beaten up by the co-accused, the complainant went to their house and injuries were inflicted upon him by the present accused-petitioners and other co-accused. When his brother-Malkit Singh arrived at the place of incident and requested them to not beat the complainant, they started beating him up too.

3. An FIR No.184 was registered under Sections 326, 325, 324, 323, 342, 506, 201, 34 of IPC on 19.10.2015 in Police Station, Sadar Dhuri, District Sangrur against the accused persons. Challan was presented before the Illaqa Magistrate wherein the present petitioners were kept in column no. 2. The prosecution filed an application under Section 319 Cr.P.C. to summon Jaswinder Kaur and Amarjit Kaur as additional accused, which was allowed by the trial Court vide order dated 20.09.2017.

4. Aggrieved petitioner laid an unsuccessful challenge to the same before the Additional Sessions Judge, Sangrur.

5. Learned counsel for the petitioner would contend that the revisional Court has erred in upholding the order of the trial Court, whereby an application under Section 319 Cr.P.C. had been allowed and the petitioners were summoned to face trial. Though as per the allegations levelled in the FIR, petitioner No.1 had inflicted injuries with sword on the person of the complainant and petitioner No.2 gave a blow on the lower right leg of the complainant, however, neither any sword recovered as per the challan presented nor has any injury been shown to have been received on the lower right leg of the complainant, as per the MLR

report. Thus, the petitioners have been wrongly summoned.

6. Learned State counsel submits that the learned Courts below have rightly passed the orders, whereby the accused-petitioners have been summoned as there were specific allegations against them.

7. Heard.

8. Before proceeding further, it would be apt to refer to Section 319 Cr.P.C. and judgments of Hon'ble The Supreme Court elucidating the same:-

“319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under subsection (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

9. Perusal of the aforesaid provision reveals that the word used therein is when it 'appears' from the evidence that any person not being the accused has committed the offence, the court may proceed against such person. The intent behind the same being that no person, who even appears to have committed any offence must be allowed to go scott free. This is the primary object of rule of law.

10. In **Sukhpal Singh Khaira vs. State of Punjab**, (2023) 1 SCC 289, Hon'ble The Supreme Court elucidating the powers under Section 319 Cr.P.C. observed and held that, "A close perusal of Section 319 of CrPC indicates that the power bestowed on the court to summon any person who is not an accused in the case is, when in the course of the trial it appears from the evidence that such person has a role in committing the offence. Therefore, it would be open for the Court to summon such a person so that he could be tried together with the accused and such power is exclusively of the Court. Obviously, when such power is to summon the additional accused and try such a person with the already charged accused against whom the trial is proceeding, it will have to be exercised before the conclusion of trial. The connotation 'conclusion of trial' in the present case cannot be reckoned as the stage till the evidence is recorded, but, is to be understood as the stage before pronouncement of the judgment as already held in **Hardeep Singh (supra)** since on judgment being pronounced the trial comes to a conclusion since until such time the accused is being tried by the Court."

11. In the case of **Manjeet Singh vs. State of Haryana and others**, (2021) SCC OnLine SC 632, wherein Hon'ble The Supreme Court set aside the judgment of the High Court affirming the order of the trial Court dismissing the application under Section 319 Cr.P.C. As a consequence thereof, while allowing the application, the trial Court was directed to summon the private persons to face trial by observing and holding that, "The High Court has lost sight of the fact that the allegations against all the accused persons right from the very beginning were for the offences under Sections 302, 307, 341, 148 & 149 IPC. The High Court has failed to appreciate the fact that for attracting the offence

under Section 149 IPC only forming part of unlawful assembly is sufficient and the individual role and/or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to either of the respondents except that they were armed with weapons and therefore, they cannot be added as accused is unsustainable. The learned trial Court and the High Court have failed to exercise the jurisdiction and/or power while exercising the powers under Section 319 CrPC.”

12. Adverting to the case in hand, the trial Court and the revisional Court have rightly passed the order, which is in consonance with the dictum laid down in the aforesaid cases and it would thus, be worthwhile to refer to the order of the revisional Court passed while dismissing the revision and affirming the order of the trial Court, the relevant para of which reads as under:

“10. ... In the present case, the date of occurrence is 18.10.2015 and statement of the complainant Sukhdev Singh has been recorded on 19.10.2015 i.e. very first statement of the complainant recorded by the police which was within 24 hours from the occurrence and the same finds mention that Amarjit Kaur was armed with rod and wife of Rupinderjit Singh was armed with Sword. Thereafter, specific allegations have been levelled against Amarjit Kaur by him that she blow of iron rod on his right leg(Pinjni). Further perusal of examination of chief of Sukhdev Singh shows that he has deposed in the Court that Amarjit Kaur was having iron rod in her hand and gave blow of it on his right leg. Perusal of statement of Sukhev Singh dated 19.10.2015 also finds mention that Jaswinder Kaur had inflicted injuries to Malkit Singh with sword and the same has been corroborated by him in his examination in chief before the Court. As far as PW-2 Malkit Singh who is brother of complainant is concerned, he also corroborated the version of the complainant by deposing that Jaswinder Kaur gave blow of Sword which struck on his left hand. Learned counsel for the revisionists has pointed out that there is discrepancy with regard to the deposition of PW-1 and MLR relied upon by the prosecution. He has argued that perusal of the MLR of complainant shows that injury no.1 is

shown to be on frontal side in the pictorial diagram whereas in his very first statement recorded before the police as well as before the Court, he has mentioned that injury was on the Pinjni of right leg which is backside 'calf'. No doubt, there seems to be silent confusion with regard to the seat of injury as shown in the pictorial diagram, but at this stage, it can not be concluded that mere this discrepancy can be the reason to decline the application of prosecution to summon Amarjit Kaur and Jaswinder Kaur as additional accused. The case in hand is at its initial stage and till date, only two prosecution witnesses have been examined and their cross examination is still to be conducted. Moreover, exact place of injury no.1 on the body of Sukhdev Singh is matter of evidence which will be clear at the time of medical evidence as well as other evidence. Thus, at this stage this Court is of the view that learned trial Court has properly discussed in its order that first version of the complainant as well as statement of Malkit Singh is in consonance with the version put by them in their examination before the Court and specific role has been attributed to accused Amarjit Kaur and Jaswinder Kaur. So, on the basis of aforesaid discussion and findings, this Court is of the view that there is no infirmity or perversity in the said order which calls for inference of this Court as the same is legally correct in the eyes of law and the order of learned trial Court is upheld. Accordingly the present revision petition stands dismissed with costs being. devoid of merits. This order of mine does not express any opinion on the merits of case. The record of trial Court along with copy of this judgment be sent back forthwith. Revision file be consigned to the record room. Pronounced in open Court.”

13. It may be accentuated that the complainant had specifically alleged, petitioner No.1 having inflicted injuries on him with a sword, while petitioner No.2 gave a blow on the back side of his lower right leg. His statement as PW-1, was also to the same effect which was corroborated by PW-2, Malkit Singh. Therefore, once a specific role has been attributed to the petitioners in the FIR lodged by the complainant, the Courts below have, thus, rightly passed the orders.

present case, this Court finds no illegality or perversity in the impugned orders whereby the petitioners had been rightly summoned, thus the same do not call for any intervention. As such, the present petition is dismissed being devoid of merit.

15. Nothing herein shall be treated as an expression on the merits of the case and the trial Court shall proceed and decide the matter, independent of any observation made in the present judgment, which was only for the purpose of adjudicating the present petition.

(AMAN CHAUDHARY)
JUDGE

01.05.2023

gsv

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