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

CRR No.1214 of 2023
Date of decision : 13.10.2023

HARKIRAT SINGH

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Manuj Nagrath, Advocate for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

Mr. M.S. Sachdev, Advocate for respondent No.2.

PANKAJ JAIN, J. (ORAL)

Present revision petition has been directed against the order passed by the Trial Court allowing the application filed under Section 319 Cr.P.C. summoning the present petitioner as additional accused.

2. FIR No.158, dated 24th of August, 2017 for offences punishable under Sections 323/341/506/451/148/149 IPC (offence under Section 307, 379, 506 IPC added later on) at Police Station Kartarpur, District Jalandhar Rural was registered at the behest of Nirvair Singh son of Bhupinder Singh who made complaint on 24th of August, 2017 alleging as under :

“Statement of Narvair Singh son of Bhupinder Singh, caste Ramdasia Sikh, r/o Mohalla Charakhari, Kartarpur, P.S. Kartarpur, District Jalandhar, aged about 28 years. Stated that I am resident of above said address and I do work at the shop of Mandeep Singh s/o

Joginder Singh, r/o Ajit Nagar, Jalandhar situated at Gurudwara Gangasar Sahib. On 22.08.2017 at about 06:30 PM, In went to the shop adjoining to my shop for drinking water and when I returned back after drinking water and when I came on road, I saw that Harmel Singh @ Mehla, Jatinder Singh son of Gurdev Singh, residents of Mohalla Kalewal and Ranjit Singh son of Harbans Singh, resident of Mohalla Kalewal came outside my shop and they raised lalkara to teach me lesson for removing Ranjit Singh and Jatinder Singh from the shop of internet. At this, Harmel Singh @ Mehla caught hold me from my neck and dragged me on road and started giving me beatings. Then Harmel Singh @ Mehla gave blow of iron rod on me, which hit on knee of my left leg. Then Jatinder Singh by taking out his Sri Sahib, gave its blow on me, which hit below knee of my left leg. Then Ranjit Singh caught my hair and pulled me down and hit me with Karra wearing in his left hand, which hit on my left shoulder. While I was lying down, they dragged me inside my office by giving me beatings and caused me injuries in my shop as well. They gave fist blows and Karra blows on my left shoulder, left bicep and chest. Harmel Singh @ Mehla gave iron rod blow on my chest. Then they all gave me beatings with fist and kick blows. They caused injuries on my right eye, shoulder and left side of my chest. In the meantime, my friend Gurjit Singh son of Daljit Singh, resident of Vishkarma Market, Kartarpur came there, who got me rescued from the clutches of said assailants. During this, 3/4 more unknown persons came present at the spot alongwith their respective weapons like Danda-Sota, who also caused me injuries. Gurpreet Singh tried his level best to make said assailants understand but they did not mend their ways. I fled away from the spot for saving my life. Above said assailants gave me threatening to kill. I remained kept hidden in my house due to fear. On 23.08.2017, my owner Mandeep Singh came up to my house and by arranging vehicle got me admitted at Government Hospital, Kartarpur for treatment, where doctor gave me treatment and after discharge, I went back to my house. Today, I alongwith my father Bhupinder Singh and owner Mandeep Singh

was going to police station for reporting the matter and you met us. I got my statement recorded before you. Till now, our talk of compromise was going on, which could not materialize. Kindly initiate legal proceeding against above said persons. Sd/- Nirvair Singh, 9872107555. Sd/- Mandeep Singh, 98155-18123, Sd/- Bhupinder Singh. Attested by Sd/- Sham Singh, ASI P.S. Kartarpur dated 24.08.2017. Police proceeding:- Today, I, ASI alongwith HC Santokh Singh No.767, HC Bahadar Lal No.733 and Ct. Vishavjit Singh No.998 was present at Bus Stand Kartarpur in connection with patrolling and checking of suspicious persons, where Nirvair Singh son of Bhupinder Singh, caste Ramdasia Sikh, r/o Charkhari Mohalla, Kartarpur alongwith his father Bhupinder Singh and owner Mandeep Singh came present before me, ASI and got recorded his statement. I, ASI after recording statement of Nirvair Singh, read over him the contents of statement, who after admitting the same to be correct appended his signatures in English, whereas his father Bhupinder Singh and owner Mandeep Singh verified the same. In MLR No.R/47/17/KTP of Nirvair Singh, doctor mentioned total 11 blunt injuries, injury No.8, 11 kept under observation and remaining injuries were simple. From the contents of statement and MLR, on finding the offence under Sections 323/341/506/451/148/149 of IPC to be made out, after writing ruqa, same is being sent to police station by hand through Ct. Vishavjit Singh No.998 for registration of FIR. After registering FIR, number of which be informed. Control Room be informed via wireless. I, ASI alongwith accompanying officials and complainant am moving towards the place of occurrence for conducting further investigation. Sd/ Sham Singh, ASI P.S. Kartarpur, District Jalandhar dated 24.08.2017. Today, within the area of Bus Stand Kartarpur at 04:05 PM. Today, on receiving of said statement at police station, FIR has been registered against accused for the respective offences. Thereafter, copy of FIR alongwith original statement is being sent to ASI at the spot by hand through the same Ct. Senior officers, SHO of police station and Control Room are being informed."

3. It is claimed that on 26th of August, 2017 a supplementary statement of the complainant was recorded. He claimed that he has come to know that three unknown persons accompanying the offenders were Happy, Harkirat Singh and Gurjit Singh. The complainant appeared as PW-1 wherein he stated on Oath as under :

“Stated that I am resident of above said address. In the year 2017, I was working with Infinity Broad Band in the shop of Mandeep Singh son of Joginder Singh, R/o Ajit Nagar, Jalandhar. On 22.08.2017, at 6.30 PM I went to drink water to adjoining shop of our office namely Durga Enterprises. When after drinking water, I came out the said shop, where Harmail Singh alias Mehla, Jatinder Singh son of Gurdev Singh, Ranjit Singh son of Harbans Singh, raised Lalkara to teach a lesson for firing Raniit Singh and Jatinder Singh for their work. Harmail Singh took me out from market to the road where Harmail Singh was armed with iron rod. He gave blow of iron rod, which hit on my left knee of my leg. Jatinder Singh took out Dasti Shri Sahib and gave blow underneath my knee of left leg. Ranjit Singh push my hair and drove me on the ground. Ranjit Singh gave blow of Kara on my left shoulder and they forcibly took me to the shop of Mandeep Singh, where I was working where Harmail Singh gave me blow of rod, which hit on chest and he also gave fist blow on my chest, head, my left shoulder. Thereafter, they switch the light of shop and close- the shutter and continuously gave me beating for about 1½ hours. Harmail Singh throw glass of water on my face and mentally torture me. During this period, they were having coke in my office and after taking a break again beating me. Gurpreet Singh came in the shop and tried to save me from the clutches of the accused but they did not stop and continue gave me beating in front of Gurpreet Singh with rod. I manage to escape. Accused also threatened me to kill me. They were calling some shooter. Harmail Singh was calling the vehicle and was threatening me that they will kill me where he had already committed murder 14 years ago. The above

said accused were accompanied by other three persons, whose name I came to know afterwards. Their names were Harpreet Singh. Gurjit Singh and Harkit Singh. These three persons were accompanied by above said three persons and they all gave me beatings. I identify all the accused persons in the court, but accused Harkirat Singh is not present today in the court. My statement was recorded by the police which is Ex.PA, on which I identify my signature. On 24.08.2017, I produced six photograph and photographs of occurrence along with CD, which are Ex.P1 to P6. CD is Ex.P7. On 30.08.2017, I have identify accused Gurjit Singh and Harkirat Singh, vide identification memo Ex.PB, on which I identify my signature at point A.
xxxx”

4. After Examination-in-Chief of the complainant was recorded, the present application was moved to summon the present petitioners as additional accused.

5. Counsel for the petitioner while assailing the impugned order submits that there was an inquiry and in the same the petitioner was given clean chit. However, the same has not been taken into consideration by the Trial Court while passing the impugned order. It has been further submitted that the impugned order is totally bereft of any reasoning. The Trial Court has not even bothered to test the evidence on the touchstone of law laid down by Apex Court in '**Hardeep Singh vs. State of Punjab**', (2014) 3 SCC 92. wherein the test prescribed is more than *prima facie*.

6. Per contra, Mr. Sachdeva representing the complainant admits that the petitioner was not initially named in the FIR. However he submits that the situation was such that the complainant was under attack by group

of persons that it was not possible for him to name all the persons at first instance. It was only after that he saw the video footage that he came to know that the petitioner was also one of the accomplices of the offenders. However, he is not in position to dispute that as per the statement made by the complainant himself it is claimed that the '*accused were accompanied by other three persons, whose name he came to know afterwards and their names were Happy, Harkirat Singh and Gurjit Singh*'. Though CD has been placed on record but the knowledge of the complainant even as per his statement is not attributable to CD. CD has not come in evidence before Trial Court. He, thus admits that at this stage statement of complainant alone cannot form basis to summon the petitioner as an additional accused in view of the fact that as per the settled law the test is *more than prima facie*.

7. In view of above, the present revision petition is allowed. Impugned order dated 13th of March, 2023 passed by the Additional Sessions Judge, Jalandhar is ordered to be set aside.

October 13, 2023

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No