

CRM-M-43101-2017

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-43101-2017
Date of decision: 18.04.2024

JYOTI AND OTHERS

. . . PETITIONERS

V/s

STATE OF PUNJAB AND ANOTHER

. . . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Lovepreet Singh, Advocate for
Mr. J.S. Jaidka, Advocate for the petitioners.

Mr. Anup Singh, AAG, Punjab.

Mr. D.S. Sobti, Advocate
for respondent No.2.

SUMEET GOEL, J.

1. The petitioners have challenged the order dated 03.04.2017 passed by Learned Additional Sessions Judge, Ludhiana, dismissing the criminal revision petition filed by the petitioners, against the order dated 06.09.2016 passed by Learned Judicial Magistrate, 1st Class, Ludhiana, summoning the petitioners as accused under section 319 of Cr.P.C.

2. An FIR bearing No.289 dated 26.10.2014 was registered at Police Station Basti Jodhewal, Ludhiana under Sections 323/341/354/506/452/34 IPC on the complaint of respondent No.2. The police after investigation of the case, filed the challan in the matter and the present petitioners were not forwarded by the police as accused to stand trial in the matter.

3. On 19.02.2016 the complainant was examined as PW-1 in the case. In her Examination-in-Chief the complainant deposed that on 24.10.2024 at about 10.30 PM, one of the petitioners namely Raj was bursting the crackers and one of such crackers burst inside the house of complainant. When complainant advised the Raj not to do so, he abused the complainant and remained adamant to burst the crackers in street by saying that the street does not belong to the father of complainant. It is the case of complainant that after that the relatives of Raj along with him took up fight with the complainant by entering her house. She deposed that Guddi mother of Raj, Jyoti sister of Raj, Aarti sister of Raj and Sunil uncle of Raj, Anitam, Usha, entered her house forcibly. Guddi held the complainant by hair, Jyoti caught by wrist, Sunil striped her by tearing her shirt worn by her. All the persons gave her fist, chappal and kick blows to her and dragged her out of her house.

4. After recording of Examination-in-Chief of the complainant, the prosecution filed an application dated 04.03.2016 under Section 319 of Cr.P.C. before the learned Trial Court, for summoning Aarti, Jyoti and Raj – the present petitioners, as accused in the case.

5. The learned Trial Court vide order dated 06.09.2016 while relying upon the judgment passed by the Hon'ble Supreme Court in the case of Hardeep Singh vs State of Punjab 2014(3) SCC 92, allowed the application filed under Section 319 of the Cr.P.C. Accordingly, the petitioners were summoned as accused to stand trial in the matter. Feeling aggrieved of the summoning order against them the petitioners filed a criminal revision petition before the Learned Additional Judge, Ludhiana. The said Criminal Revision Petition was dismissed by the Learned Additional Sessions Judge, Ludhiana vide order dated 03.04.2017. The petitioners have filed the present petition under Section 482 of Cr.P.C. against their summoning as accused in the matter and

seeking quashing of order dated 06.09.2016 passed by Learned Trial Court as well as order dated 03.04.2017 passed by the learned Additional Sessions Judge, Ludhiana.

6. It is argued on behalf of the petitioner that a person cannot be summoned as an additional accused on the basis of Examination-in-Chief alone when the witnesses are yet to be subjected to cross-examination. In support of his argument reliance was placed on judgment passed by this Court in the case of Rupinder Kaur vs State of Punjab, 2008(4) RCR (Criminal) 235. It is further argued that the petitioners have not committed any offence and have been falsely roped in the present case. It is argued that the petitioner No.1 is already married and is residing at her matrimonial house and the petitioners No.2 and 3 were minors at the time of the incident.

7. I have heard the learned counsel for the parties and have gone through the record of the case carefully. After giving my thoughtful consideration to the case I am of the considered opinion that the present quashing petition lacks merit. The argument raised on behalf of the petitioners that the summoning of the petitioners on the basis of Examination-in-Chief of the complainant, without conducting cross-examination, and reliance placed upon the judgment of this Court in case of Rupinder Kaur (supra) is ex-facie an argument in the teeth of the judgment passed by the Hon'ble Supreme Court in the case of Hardeep Singh vs State of Punjab 2014(3) SCC 92. The said argument is liable to be outrightly rejected being wholly ill conceived apart from being malicious. The judgment passed by the Hon'ble Supreme Court is a constitution Bench judgment and has been passed subsequent to the judgment passed by this Court in case of Rupinder Kaur (supra). Further the judgment in Hardeep Singh's case has duly been relied upon by the learned Trial Court in the order summoning the petitioners to stand trial in

the case. In the said judgment the Hon'ble Supreme Court while answering the question No.II framed in the case, held that for summoning a person as an accused in the case under Section 319 Cr.P.C., the Examination-in-Chief of a witness, disclosing material against the person sought to be summoned, does not require the recording of cross-examination of said witness also, before exercising power under Section 319. The findings returned by the Hon'ble Supreme Court are reproduced hereunder:

“Question No. II

Q.II Whether the word “evidence” used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the Examination-in-Chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.”

8. The next argument advanced on behalf of the petitioner that the petitioners have not committed any offence and have been falsely roped in the present case is also without any substance. The bald assertion on part of the petitioners in this regard cannot be made basis for quashing the summoning order passed by the learned trial court. The culpability of the petitioners is a question of fact to be decided by the learned trial court after taking into account the wholesome evidence to be led on record of the case. The petitioners have utterly failed to bring out any such exceptional fact, on the basis of any material of sterling quality, before this court to hold that the petitioners have been falsely implicated in the present case, at this stage.

9. The argument advanced on behalf of the petitioner qua the petitioners Nos.2 and 3 being minors at the time of incident, is again of no help to the case of petitioners. Learned counsel for the petitioners failed to bring out anything on the record of the case, against the findings returned by the learned Additional Sessions Judge, while dismissing the criminal revision filed by the petitioners against their summoning. The learned Additional Sessions Judge has correctly held that in case accused Nos.2 and 3 were minors at the time incident, then they will be dealt with in accordance with the provisions of Juvenile Justice Act, but they cannot get any benefit at this stage.
10. In view of my above findings the present petition under Section 482 of the Cr.P.C. filed by the petitioners is dismissed being devoid of any merit. Resultantly, the summoning order dated 06.09.2016 passed by the learned Judicial Magistrate, 1st Class, Ludhiana is upheld.

(SUMEET GOEL)
JUDGE

April 18, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No