

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M No. 49578 of 2017 (O&M)
Date of Decision: 26.02.2024

Balwinder Singh @ Binder Singh
..... Petitioner

Versus

State of Punjab
..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Tajinder Pal Singh Makkar, Advocate
for the petitioner.

Mr. Siddharath Sandhu, Assistant Advocate General, Punjab

Mr. Karandeep S. Sidhu, Advocate
for the complainant.

HARKESH MANUJA, J. (ORAL)

The petitioner, by way of present petition filed under Section 482 Cr.P.C., seeks quashing of order dated 04.12.2017 (**Annexure P-3**) passed by learned Additional Sessions Judge, Ferozepur, upholding the order dated 25.11.2016 (**Annexure P-2**) passed by the learned Judicial Magistrate First Class, Guru Har Sahai, whereby the petitioner was summoned as an additional accused to face trial, in exercise of powers under Section 319 of the Code of Criminal Procedure (**for short “Cr.P.C.”**).

[2] In the present case, having been implicated in FIR No. 47 dated 22.06.2015 (**Annexure P-1**) under Sections 325 / 324 / 34 of Indian Penal code, registered at Police Station Lakho Ke Behram District Ferozepur, the petitioner being declared innocent by the Investigating Agency, was kept in Coloumn No. 2 and the final report was presented against the other two accused, namely, Rashpal Singh and Gurbachan Singh. Upon framing of

charges, the complainant (Kaka Singh) appeared as PW-1 on 06.04.2016 and reiterated the involvement of petitioner in the alleged incident followed by filing of an application dated 21.05.2016 under Section 319 Cr.P.C. by the prosecution for the purpose of summoning him as an additional accused; the prayer was allowed by the trial Court vide order dated 25.11.2016 and the petitioner was summoned as an additional accused. Aggrieved thereof, the petitioner filed revision petition before the Court of learned Additional Sessions Judge, Ferozepur, however, the same was dismissed on 04.12.2017.

Hence, the present petition.

[3] Learned counsel for the petitioner submits that the petitioner was summoned as an additional accused while relying upon the statement made by the complainant-Kaka Singh (PW-1), reiterating the involvement of petitioner in the alleged offence. He submits that the other two accused persons, namely, Rashpal Singh and Gurbachan Singh, who involved in the FIR (supra), have been acquitted vide judgment dated 24.01.2024 passed by learned JMJC, Guruharsahai, granting them the benefit of doubt in the wake of material contradictions in the statements of two eye witnesses, i.e. PW-1/complainant (Kaka Singh) and PW-5/injured (Jallo Bai). Learned counsel, thus, points out that the statement of PW-1 (Kaka Singh) should not be relied upon for summoning the petitioner as an additional accused and as such, prays for setting aside the impugned orders.

[4] On the other hand, learned counsel for the complainant vehemently opposes the prayer made in the petition, while submitting that the eye witness-Kaka Singh (PW-1) categorically named the petitioner, pointing out his involvement in the incident in question and thus, submits that the impugned orders do not warrant any interference.

[5] After hearing learned counsel for the parties and going through the paper-book / relevant record, I find substance in the submissions made on behalf of the petitioner.

[6] The application under Section 319 Cr.P.C. for the purpose of summoning the petitioner as an additional accused was primarily based on the deposition of one of the eye-witness, PW-1 (Kaka Singh); however, the same has been disbelieved by the trial Court while passing the judgment dated 24.01.2024, acquitting the other two accused persons, namely, Rashpal Singh and Gurbachan Singh, in the wake of material contradictions in the statements of two eye witnesses, i.e. PW-1/complainant (Kaka Singh) and PW-5/injured (Jallo Bai).

Thus, once the deposition of PW-1 (Kaka Singh) has not been relied upon by the trial Court for the purpose of indicting the two accused persons who were even charge-sheeted, it would be unjust to summon the petitioner as an additional accused while relying upon the said statement. Reference in this regard can be made to a latest decision rendered by the Hon'ble Apex Court in case of ***“Vikas Rathi Versus The State of U.P. & Anr.”***, reported as ***2023 (2) RCR (Criminal) 55***. Relevant paras-13 & 14 of the said judgment are re-produced hereunder:-

“13. The aforesaid material was not sufficient if examined in the light of the law laid down by this Court for summoning of an additional accused in exercise of power under Section 319 of the Cr.P.C. to establish complicity of the appellant in the crime.

14. After conclusion of the entire evidence and examination of the material produced on record even against the charged accused, the trial court had acquitted them vide judgment dated 15.03.2017. It

shows that material produced on record was not even sufficient for conviction of the accused against whom chargesheet was filed.”

[7] In view of the discussion made hereinabove, the impugned order dated 04.12.2017 (**Annexure P-3**) passed by learned Additional Sessions Judge, Ferozepur, as well as the order dated 25.11.2016 (**Annexure P-2**) passed by learned Judicial Magistrate First Class, Guru Har Sahai, are, therefore, set aside.

[8] The petition is **allowed** accordingly.

February 26, 2024
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(HARKESH MANUJA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No