

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-939-2014(O&M)
Reserved on: 12.01.2024
Pronounced on: 23.01.2024

Manohar Lal @ Happy
... Petitioner(s)
Versus
State of Punjab and another
...Respondent (s)

CRR-3738-2014(O&M)

Pawan Kumar
... Petitioner(s)
Versus
State of Punjab and another
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Surinder Sharma, Advocate
for the petitioner(s).

Mr. Shiva Khurmi, AAG, Punjab assisted by
ASI Nirmal Singh.

Ms. Ritu Punj, Legal Aid Counsel
for respondent no.2.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
139	10.10.2011	Goraya, District Jalandhar	307/326/324/34 IPC

1. This order shall dispose of two criminal revision petitions i.e. CRR Nos.939 and 3738 of 2014, as the same have arisen out of common FIR and common order has been passed, which has been challenged in both the petitions. However, facts are being noticed from CRR-939-2014.

2. Aggrieved by order dated 28.02.2014, vide which the application filed by the complainant under Section 319 CrPC to summon the petitioners-Manohar Lal and Pawan Kumar, as additional accused, was allowed, the said newly arraigned accused had come up before this Court by filing the present criminal revision petitions under Section 401 CrPC on 20.3.2014.

3. On 24.03.2014, a coordinate Bench of this Court had stayed the further proceedings to the impugned order and the said interim order is continuing till date.

4. Respondent no.2 was represented through legal aid counsel and respondent no.1-State was also duly represented. However, neither of them have filed any reply nor sought time to file reply at any point of time.

5. I have heard counsel for the parties and gone through the pleadings as well as the documents annexed therewith.

6. The assault in question had happened in the early morning of 8.10.2011, when the Bahadur Singh, father of the complainant, was walking in his village along with his dog. At around 7 a.m., his son Dawinder Singh (Complainant) heard shrieks of his father and when he reached the fields of one Ajit Singh, he came to know that three unknown persons with muffled faces had come on a motorcycle and they were attacking his father with *dattar*. When Dawinder Singh raised hue and cry on his father being assaulted, the assailants fled away along with their weapons on their motorcycle. After that, the complainant Dawinder Singh took his father to hospital, where the police recorded his statement, based on which the above captioned FIR was registered.

7. When Bahadur Singh recovered from his injuries, he also made a statement on 15.10.2011 on similar lines which was identical to the initial statement made by his son Dawinder Singh (Complainant). He stated that he had identified the assailants as Ram Dass (A-5), Gurdeep Singh @ Deepa (A-3), Ranjodh Singh (A-1) and Sukhwant Singh @ Mangi (A-2). Thus, he increased the number of assailants from three to four and also the motorcycles from one to two.

8. On 27.11.2011, the investigator SI Sat Pal arrested all the above-mentioned four accused namely Ram Dass (A-5), Gurdeep Singh @ Deepa (A-3), Ranjodh Singh (A-1) and Sukhwant Singh @ Mangi (A-2) and recovered two motorcycles and three *dattars*.

9. After completion of investigation, the police supplied documents as required under Section 207 CrPC and launched prosecution against five persons including the abovesaid four persons and one Balwinder Singh @ Billu (A-4), to whom *dattar* blow was attributed. The police report under Section 173 CrPC was filed on 31.11.2012.

10. After prosecution evidence, when statements of the accused were recorded under Section 313 CrPC, they denied the charges led against them and pleaded their innocence. It is pertinent to mention that accused Gurdeep Singh and Sukhwant Singh died during the pendency of trial.

11. It is relevant to mention that on 17.10.2012, injured Bahadur Singh appeared as PW-3 and recorded his testimony, which is annexed as Annexure P-3. In his testimony, he increased the number of accused to five, stating that those five persons had come on two motorcycles. He stated that he was able to remove the scarf from the face of one of the accused persons and identified him as Ram Dass (A-5). In addition to that, he stated that two more persons namely Manohar Lal @ Happy and Pawan Kumar (petitioners), who had alighted from the second motorcycle along with an unidentified person and assaulted him. But he did not attribute any specific injury to Manohar Lal @ Happy and Pawan Kumar (petitioners). Based on this statement, the complainant filed an application under Section 319 CrPC to summon both these accused namely Manohar Lal @ Happy and Pawan Kumar (petitioners), which was allowed vide order dated 28.02.2014.

12. Feeling aggrieved by the summoning order, the petitioners-newly added accused, challenged the order dated 28.02.2014 by filing separate criminal revision petitions.

13. A perusal of order dated 28.02.2014, vide which learned Additional Sessions Judge, Fast Track Court (Ad hoc), Jalandhar had summoned the petitioners namely Manohar Lal @ Happy and Pawan Kumar, points out that the complainant had filed an application (complaint) dated 01.11.2011, in which he had named accused Manohar Lal @ Happy, Billu @ Pal Ram and Pawan, all residents of Village Paddi Jagir and it was explicitly mentioned that the police did not take any action against them. In the impugned order, learned Additional Sessions Judge has observed that the said application was of 01.11.2011 and challan was presented on 12.01.2012 and in the report under Section 173 CrPC, there was no reference to the said application, which was duly marked to the Investigating Officer for appropriate action. Thus, primarily, for this reason, he allowed the said application for summoning.

14. It would be appropriate to extract paragraph 3 of the impugned order dated 28.2.2014 passed by Additional Sessions Judge, which reads as under:-

“3. I have also gone through the application, which was moved by the complainant dated 01.11.2011 in which accused Ladi @ Bhajan Lal, Billu @ Pal Ram, Pawan S/o not known, All R/o Village Paddi Jagir, Tehsil Phillaur District Jalandhar were specifically named and it was specifically mentioned by the complainant that no action is being taken by the police against the above said accused and he expressed his dissatisfaction towards investigation and also expressed the apprehensions about threat to his life.”

15. Even if the application in question is taken as gospel truth, it is revealed that neither the name of Pawan Kumar was mentioned in the earlier statement of the complainant nor any role was attributed to him. Further, Manohar Lal was also not named. It was later on, while appearing as witness, on 17.10.2012, the injured Bahadur Singh made vital improvements and stated that three more persons namely Pawan Kumar, Manohar Lal and one another unidentified person had also participated in the assault upon him. However, despite that, he did not attribute any specific injury or role to any of them. Even in the initial statement of injured Bahadur Singh recorded by the police on 15.10.2011, he had not named Manohar Lal and Pawan Kumar or mentioned about second motorcycle. Initially, the complaint, on the basis of which the FIR in question was registered, was made at the instance of Dawinder Singh son of Bahadur Singh, who had witnessed the incident.

16. Petitioner’s counsel has placed on record judgment dated 26.9.2022 passed by of learned Additional Sessions Judge, Jalandhar, in which all other three remaining accused namely Ram Dass, Ranjodh Singh @ Dhodha and Balwinder Kumar have been acquitted, (two accused namely Gurdeep Singh and Sukhwant Singh having been expired during trial), as the trial Court did not believe the testimony of prosecution witnesses especially the victim, primarily because of the improvements made by him and also because he had absolved some of the accused.

17. An analysis of the abovesaid would lead to a clear cut conclusion that the injured Bahadur Singh failed to point out even *prima facie* case against Pawan Kumar and Manohar Lal, whereas for the purposes of summoning any additional accused under Section 319 CrPC, the requirement of evidence should be more than *prima facie*.

18. Given above, the present petitions are allowed and impugned order of summoning dated 28.02.2014 is set aside. Bail bonds are discharged.

Petitions allowed in the terms mentioned above. All pending applications, if any, stand disposed of.

A photocopy of this judgment be placed on the file other connected case.

(ANOOP CHITKARA)
JUDGE

January 23, 2024
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes