



**123+243 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-38212-2019 (O&M)

Reserved on: 24.07.2024

Pronounced on: 29.07.2024

Pritam Singh and others

....Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manbir Singh Basra, Advocate and
Mr. Anupinder Brar, Advocate
for the petitioners.

Mr. Rishab Singla, AAG, Punjab.

Mr. A.P.S. Shergill, Advocate,
Mr. Manoj Verma, Advocate, and
Mr. Navkiran Banga, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J.

1. The petitioner has approached this Court by the filing the present petition under Section 482 Cr.P.C. seeking quashing of the impugned order dated 16.07.2019 (Annexure P-1) passed by the learned Additional Sessions Judge, Gurdaspur, in the case stemming from FIR bearing No. 53, dated 27.10.2017, registered at Ghanie Ke Bangar, Gurdaspur, whereby the petitioners have been summoned as an additional accused to face trial under Sections 308, 326, 325, 354-A, 148 and 149 of the IPC.

FACTUAL BACKGROUND

2. Succinctly, the facts are that the FIR was registered on the basis of the statement of the complainant-respondent No.2, wherein she stated that on



26.10.2017 at around 6.30 P.M., accused Ajaib Singh along with his son Pargat Singh came on a tractor in the vicinity of her residence to fill earth. Petitioner No.1-Pritam Singh called upon Ajaib Singh to end the dispute with the complainant and her family once and for all and teach her and her family members a lesson if they tried to stop them. Thereupon, the complainant called her brother-in-law in order to stop the trolley, but petitioner No.1 dealt a *Dang* blow on her right shoulder. Accused Ajaib Singh inflicted a *Dang* blow on her left shoulder. Accused Pargat Singh son of Ajaib Singh gave two *Dattar* blows on the fingers of her left hand. The remaining accused namely Kulwant Singh (Petitioner No.2), Karam Singh (Petitioner No.3) and Ninderpal Singh (Petitioner No.8) also caused injuries to her, her daughter Kuldeep Kaur, and her brother-in-law Kulwinder Singh. On the basis of the statement, FIR No.53 dated 27.10.2017 for the offences punishable under Sections 323, 324, 148, 149 IPC was registered. On receipt of the opinion of the doctors, it was learnt that the injuries on the person of respondent No.2 and Kulwinder Singh were grievous in nature and accordingly offences punishable under sections 308, 326, 325 and 354-A of the IPC were added.

3. On 2.11.2017, supplementary statement of the complainant along with Kuldip Kaur was recorded on the basis of which Nirmal Kaur (Petitioner No.7), Harinder Kaur (Petitioner No.4), Sharanjit Kaur (Petitioner No.5), Jasraj Kaur (Petitioner No.6), and Pargat Singh were nominated as accused vide Rapt No. 20 dated 02.11.2017.

4. During investigation of the case the petitioners were declared innocent with respect to offences punishable under sections 354-A, 148, 149 of the IPC and were kept in column No.2 of the Final Report filed under Section 173 Cr.P.C., while Ajaib Singh and Pargat Singh were nominated as accused.



However, the learned Additional Sessions Judge, Gurdaspur observed the following in the impugned order, vide which the petitioners were summoned as an additional accused:

"Record perused. After going through the record it reveals that there are specific allegations against accused Kulwant Singh, Karam Singh, Ninderpal Singh, Pritam Singh, Nirmal Kaur, Harinder Kaur, Sharanjit Kaur and Jasraj Kaur as per the statement of Sukhwinder Kaur. As such, prima facie, there are specific allegations against accused persons namely Kulwant Singh, Karam Singh, Ninderpal Singh, Pritam Singh, Nirmal Kaur, Harinder Kaur, Sharanjit Kaur and Jasraj Kaur and there is sufficient material on record to proceed against them under sections 308, 326, 325, 354-A, 148, 149 IPC. Therefore, taking into consideration the allegations made by the complainant and the documents on record, exercising the powers under section 193 Cr.P.C., the accused persons namely Kulwant Singh, Karam Singh, Ninderpal Singh, Pritam Singh, Nirmal Kaur, Harinder Kaur, Sharanjit Kaur and Jasraj Kaur are ordered to be summoned through arrest warrants for 07.08.2019."

Hence the present petition challenging the summoning of the petitioners as an additional accused.

CONTENTIONS

5. Learned counsel for the petitioners argued that the present FIR arises from a cross-case. FIR No. 53, dated 27.10.2017 under Sections 324, 323, 148, 149 IPC was initially registered on the statement of Ajaib Singh against the complainant-respondent No.2 and her family members. Subsequently, a cross version case, which resulted in the lodging of the instant FIR, was registered based on the statement of the complainant. A Special Investigation Team was constituted by the Inspector General of Police, Border Range, Amritsar to investigate the present FIR. Subsequently, the petitioners were found to be innocent by the investigating agency and were kept in column



No.2 of the Final Report. This further strengthens the initial presumption of innocence. However, the learned Court below acted in a completely mechanical manner, without applying its judicial mind, as it summoned the petitioners without affording any reasons or justification. Reliance in this regard was placed on the judgment of this High Court in ***Jagdish Singh vs. State of Punjab 2018(4) R.C.R.(Criminal) 767***. Also, the power of summoning an additional accused, if it at all had to be exercised in the present case, it ought to have been exercised under Section 319 Cr.P.C as no such power is devolved to the learned trial Court under Section 193 of Cr.P.C.

6. Learned counsel for respondent No.2 averred that the learned trial Court was well within its power to summon the accused after taking cognizance of the case, therefore, the petitioners cannot question the power of the learned Court below to summon any accused against whom specific allegations have been made and sufficient material has been brought on record in order to initiate the process of trial, as has happened in the instant case. Reliance in this regard was placed on the judgments of the Hon'ble Supreme Court in ***Dharam Pal and others vs. State of Haryana and another (2014) 13 SCC 9***, ***Kishun Singh vs. State of Bihar, 1993(1) SCC 16*** and ***Nisar and others vs. State of U.P. 1995(2) SCC 23***. Further, it was argued that as a direct result of the occurrence and the pressure mounted by the petitioners thereafter, the daughter of the complainant, who also sustained injuries due to the confrontation, committed suicide. As such, the petitioners are not entitled to any sympathy. The entire incident was a well-planned criminal conspiracy. The police openly favoured the petitioners and therefore, they were kept in column No.2 of the Final Report, despite cogent evidence which establishes the complicity of the petitioners.



OBSERVATIONS AND ANALYSIS

7. I have heard the learned counsel for the parties and perused the record of the case with their able assistance. Before dealing with the contentions put forth by the counsel, it would be beneficial to reproduce Section 193 of the Cr.P.C. under which the petitioners were summoned to face trial:

“193. Cognizance of offences by Courts of Session.

Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.”

8. A two Judge Bench of the Hon'ble Supreme Court in ***Kishun Singh vs. State of Bihar, 1993(1) SCC 16***, which, speaking through Justice Aziz Mushabber Ahmadi, observed the following:

*“16. We have already indicated earlier from the ratio of this Court's decisions in the cases of **Raghubans Dubey** and **Hariram** that once the court takes cognizance of the offence (not the offender) it becomes the court's duty to find out the real offenders and if it comes to the conclusion that besides the persons put up for trial by the police some others are also involved in the commission of the crime, it is the court's duty to summon them to stand trial along with those already named, since summoning them would only be a part of the process of taking cognizance. We have also pointed out the difference in the language of section 193 of the two Codes; under the old Code the Court of Session was precluded from taking cognizance of any offence as a Court of original jurisdiction unless the accused was committed to it whereas under the present Code the embargo is diluted by the replacement of the words the accused by the words the case. Thus, on a plain reading of section 193 as it presently stands once the case is committed to the Court of Session by a magistrate under the Code, the restriction placed on the power of the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted. On the magistrate committing the case under section 209 to the Court of Session the bar of section 193 is lifted thereby investing the Court of Session complete and unfettered jurisdiction of the Court of original jurisdiction to take cognizance of the offence which would include the Summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record.”*



9. A Constitution bench of the Hon'ble Supreme Court in ***Dharam Pal and others vs. State of Haryana and another (2014) 13 SCC 9*** affirmed the ratio of ***Kishun Singh (supra)***. Speaking through the then Chief Justice of India, Altamas Kabir, the following was held:

“39. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Sessions Judge.

*40. In that view of the matter, we have no hesitation in agreeing with the views expressed in ***Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470]*** that the Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Sessions Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.*

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*42. The reference to the effect as to whether the decision in ***Ranjit Singh case [Ranjit Singh v. State of Punjab, (1998) 7 SCC 149 : 1998 SCC (Cri) 1554]*** was correct or not in ***Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470]***, is answered by holding that the decision in ***Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470]*** was the correct decision and the learned Sessions Judge, acting as a court of original jurisdiction, could issue summons under Section 193 on the basis of the records transmitted to him as a result of the committal order passed by the learned Magistrate.*



10. A study of the these judgments clearly explicates that the Court of Sessions can issue process to summon anyone as an accused on being satisfied that a case is made out to proceed against that person, regardless of whether he has been declared innocent in the Final Report filed under Section 173(3) of Cr.P.C. It is settled law that the stage of recording of evidence is reached only after the charges are framed. It is only at this stage that the trial Court can exercise the power devolved to it by Section 319 of Cr.P.C. Therefore, the Court can summon a person as an accused under Section 193 of Cr.P.C., between the two stages i.e. taking cognizance by the Court of Sessions and the framing of charges and proceeding with trial, being the Court of original jurisdiction. In such an event, the Court must be convinced that a *prima facie* case is made out against the said person and their complicity is suspected from the materials available on record.

11. Reverting to the facts of the present case, the petitioners were summoned by the learned Additional Sessions Judge, Gurdaspur, however, a perusal of the impugned order shows that no reasons have been recorded by the learned trial Court to exercise the power under Section 193 Cr.P.C. As per the Final Report, the petitioners have been explicitly declared to be innocent pursuant to the investigation conducted by the police officials. In such a scenario, the learned trial Court ought not to have overlooked this fact and summon the petitioners as a matter of course. Such an order, completely subverts and erodes the very purpose of conducting an investigation. The facts of the present case are squarely covered by the ratio of this Court's judgment in ***Gautam Sharma @ Goutam Sharma vs. State of Punjab and another 2024(3) R.C.R. (Criminal) 382***, wherein this Court held as follows:



“The Court of Sessions can summon a person as an accused under Section 193 of Cr.P.C., between the two stages i.e. taking cognizance by the Court of Sessions and the framing of charges and proceeding with trial, being the Court of original jurisdiction. In such an event, the Court must be convinced that a prima facie case is made out against the said person and their complicity is suspected from the materials available on record.” (emphasis added)

12. As per the impugned order, the petitioners were summoned on the basis of the allegations made in the complaint and the documents available on record. Even if the summoning of the petitioners under Section 193 Cr.P.C. is held to be good in law, the learned trial Court did not pass any finding regarding as to what constitutes the 'material on record' which *prima facie* establishes the complicity of the petitioners. The said standards have to be satisfied by the Court while exercising power even under Section 193 CrPC against a person who is in Column No. 2 of the Final Report i.e. declared innocent on investigation. As such it is rather curious as to how the investigating agency, on the very same set of allegations and material, decided that no judicial scrutiny is warranted qua the petitioners and decided to place them in column No.2, while the Court, citing the same, mechanically summoned the petitioners.

13. Considering the vague and generic nature of the allegations levelled against the petitioners coupled with the fact that the Final Report lacked any incriminating material against them, it is clear that the learned Court below has failed to refer to all the relevant material filed by the investigating agency while passing the impugned order. The Hon'ble Supreme Court in ***Brijendra Singh vs. State of Rajasthan, 2017 (3) R.C.R. (Criminal) 374*** has held that if a person is found to be innocent in view of the evidence gathered during investigation and sufficient reasons have been accorded by the investigating agency to substantiate such finding, the trial Court cannot



summon that person as an accused in the absence of any fresh inculpatory material brought on record. Moreover, in the case at hand, neither any overt act or specific role has been attributed to the petitioners. In fact, Nirmal Kaur, Harinder Kaur, Sharanjit Kaur, Jasraj Kaur and Pargat Singh were nominated as accused on the basis of a supplementary statement which was recorded after a week. Additionally, a review of the impugned order would reflect that the learned Court below has failed to make any remarks challenging the Final Report. As such, this Court is of the considered opinion that the learned Court below has fallen into error by passing the impugned order in a casual manner as it is evident that no *prima facie* case is made out against the petitioners on the basis of material available on record.

CONCLUSION

14. As an upshot of the above discussion, the petition stands allowed and the impugned order dated 16.07.2019 passed by the learned Additional Sessions Judge, Gurdaspur is set aside.

15. Pending miscellaneous application(s) if any, also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

29.07.2024
Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No