

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

129

CRM-M-48597 of 2023
Date of Decision:24.01.2024

Ram Kishan @ Kalu @ Ram Krishan Chand and others

....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Raj Kumar Arya, Advocate,
for the petitioners.

SUDEEPTI SHARMA, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing order dated 03.01.2022 (Annexure P-4) passed by the learned Judicial Magistrate Ist Class, Gurdaspur, whereby the petitioners have been summoned in cross version case registered in FIR No.59 dated 17.09.2019, registered under Sections 354, 323, 34 IPC, at Police Station Purana Shalla District Gurdaspur, to face trial under Sections 323, 324, 341, 34 IPC and order dated 21.08.2023 (Annexure P-5) passed by the learned Addl. Sessions Judge, Gurdaspur, has been dismissed.
2. Learned counsel for the petitioners contends that the petitioners have been falsely implicated and no injuries have been attributed to them. In support of his contention, he has relied upon the

judgments of three different co-ordinate Benches of this Court titled as Geeta Devi and another versus State of Punjab and another (CRR-4871 of 2017, decided on 05.01.2024; Paramvir @ Happy versus State of Haryana (Criminal Misc. No.352-M of 2008, decided on 13.08.2008) and Nachattar Singh versus State of Punjab and others (Criminal Revision No.2356 of 2014, decided on 05.08.2014).

3. I have heard learned counsel for the petitioners.

4. After hearing learned counsel for the petitioners and perusing the impugned orders passed by the learned Courts below and the judgments relied upon by the counsel for the petitioners, this Court concludes as under:-

i) It has been rightly observed by the learned Additional Sessions Judge, Gurdaspur, while passing the impugned order dated 21.08.2023 that Section 319 of the Code of Criminal Procedure is an important tool for ensuring that justice is served. The record was examined and it was ensured by the learned Court below that *prima facie* a case is made out and the statement of Anil Kumar, the complainant/eye witness, who appeared as PW1, has also been examined, who has specifically named the petitioners and deposed about the specific injuries inflicted by them to the complainant and his uncle-Mulkh Raj. The medical records in the form of Medico-Legal Report (MLR) and X-Ray reports were also examined by the Court below. These reports show that Mulkh Raj and Anil Kumar had suffered

5 and 3 injuries respectively. The learned Court below further observed that as far as the merits of the evidence is concerned that is to be appreciated only during the trial after the cross-examination of the witnesses and the scrutiny by the Court at this stage using powers under Section 319 of the Code of Criminal Procedure is not warranted. As far as for attracting the offence under Sections 323, 324, 341, 34 IPC against the petitioners is concerned, the material on file is more than that of as required for framing of the charges. After taking into consideration each and every aspect which was argued by the learned counsel for the petitioners, the impugned order dated 21.08.2023 has been passed.

ii) Now coming to the judgment cited by the learned counsel for the petitioners of ***Geeta Devi's*** case (supra). In this case, the learned counsel for the petitioner relied upon paragraph 6, wherein it has been held by this Court that merely for the reason that the petitioners have been named by the complainant, the powers under Section 319 of the Code of Criminal Procedure cannot be exercised unless and until the evidence on record satisfies 'test of more than *prima facie* case'. The facts of the case of the petitioners are different from the facts of this case since as per the impugned order the injuries are attributed to the petitioners.

iii) In another judgment of ***Paramvir @ Happy's*** case (supra), he relied upon paragraphs No.12 to 14 of the judgment. It was held that summoning of the petitioner on the same version having been repeated

in Court, without its veracity having been tested by way of cross-examination or some other material coming on record, is not to achieve criminal justice. It has further been repeatedly held that the power should be exercised sparingly and only if compelling circumstances exist, whereas in the present case there are specific allegations against the petitioners and it has been categorically explained in the impugned order after taking into consideration the record.

iv) Learned counsel for the petitioners in *Nachattar Singh's* case (supra) relied upon paragraphs No.10 and 14, wherein it has been held that power under Section 319 of the Code of Criminal Procedure is an extraordinary power to be exercised very sparingly and only if compelling circumstances and reasons are there for taking cognizance against other persons who are sought to be summoned. The said power is to be exercised judiciously, only in case fresh evidence is there which has come into light during the course of inquiry or trial of the offence and the Court is satisfied that such person has committed any offence for which he can be tried with the other accused. Further, in paragraph 14, it was observed that neither any fresh evidence has come in the statement of complainant nor any compelling reasons are there to summon said two persons as the statement of complainant is merely a reiteration of earlier statement made before the Police authorities and in the investigation, the same has been considered and these persons were found to be innocent. The ratio of this judgment is also not applicable to the facts of the case of the present petitioners as the order dated

21.08.2023 (Annexure P-5) passed by the learned Addl. Sessions Judge, Gurdaspur, is well reasoned as detailed above. And every aspect has been considered after taking into consideration the record and the statement of the complainant. Since the injuries are specifically attributed to the petitioners, the impugned order has been accordingly passed.

5. In view of the above, this Court do not find any infirmity in the impugned order and therefore, the present petition is dismissed.

6. Pending applications, if any, also stand disposed off.

(SUDEEPTI SHARMA)
JUDGE

January 24, 2024
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No