

(2018) 07 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-9589 of 2017(O&M)

Sukhwinder Kaur and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 02-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 354, 451, 506
Code of Criminal Procedure, 1973 — Section 173, 319

Citation : (2018) 07 P&H CK 0003

Hon'ble Judges : LISA GILL, J

Bench : Single Bench

Advocate : P.S.Ahluwalia, S.Sukarchakia, Raman Mohinder Sharma

Final Decision : Allowed

Judgement

The petitioners are aggrieved of order dated 04.08.2015 passed by the Judicial Magistrate Ist Class, Patiala, whereby they have been summoned to

face trial as additional accused in FIR No. 46 dated 22.04.2013, on an application under Section 319 Cr.P.C. They are also aggrieved of order dated

31.01.2017, passed by learned Additional Sessions Judge, Patiala, whereby their revision against order dated 04.08.2015, has been dismissed.

Brief facts necessary for the adjudication of the case are that FIR No. 46 dated 22.04.2013, under Sections 451, 354 323, 34 IPC, was registered on a

statement of the injured-Amandeep Kaur d/o Balbir Singh. Amandeep Kaur stated that on 22.04.2013, she was seven (07) months pregnant. Her

husband Balbir Singh and sister-in-law-Raj Kumari had employed masons for construction of a boundary wall of their house. The plinth of the wall on

the backside was being dug. The same is adjacent to the fields of Jora Singh. In the meantime, sons of Zora Singh, Ramandeep (petitioner no.2) and

his brother Gurpreet Rai (non applicant facing trial) along with their mother (petitioner no.1) and Gurnam Kaur w/o Bhagwan Singh, petitioner no.3, maternal aunt (Mami) of Ramandeep and Gurpreet came to the spot. It is alleged that petitioner no.2 and his brother-Gurpreet Singh started abusing her sister-in-law-Raj Kumari. The complainant on hearing the noise tried to keep them away. Gurpreet Singh allegedly slapped the complainant and bit her right arm. Petitioners no.1 and 3 beat her by holding her hair. Petitioner no.3, allegedly dealt fist blows upon her stomach. The complainant is stated to have become unconscious and fallen down. Allegations of beating up of labour engaged in the work, the complainant's mother-in-law and sister-in-law Raj Kumari were raised as well. The labour present there freed them from the clutches of the accused. It is stated that the complainant party was constructing a wall on the back on their side of the courtyard. The reason for the grudge, it is stated was that the accused party wanted to stop the complainant side from constructing a wall and wanted to take possession of the complainant's area. The complainant's husband returned home at 6.00.p.m. He was apprised of the incident which took place at 4.45.p.m. The complainant's husband brought the complainant and her sister-in-law-Raj Kumari to Rajindera Hospital, Patiala. Four injuries each were found on the person of the complainant and Raj Kumari. Medico legal reports are attached as Annexure P-7 with this petition.

At the outset, the police authorities noted that on the basis of the statements and the medico legal reports received, no offence worth mentioning appeared to have been committed, but further action would be taken after inquiry and obtaining the medical record. This was so recorded on 18.04.2013. Thereafter, on 22.04.2013, ASI Major Singh reported that on inquiry being made, it was found that Ramandeep Kaur etc., started the quarrel and Gurpreet Singh bit on the arm of the complainant and also hit her on the breast with his hand. FIR was accordingly registered under Sections 451, 354, 323, 506, 34 IPC.

The police, on investigation, found the present petitioners innocent. Inquiry was conducted by the Deputy Superintendent of Police, Samana. Inquiry report dated 20.10.2013 is attached as Annexure P-2 with this petition. It is specifically stated therein that the dispute in question had taken place only with the co-accused-Gurpreet Singh. Gurpreet Singh is being proceeded against

for the offences punishable under section 323, 451, 506 IPC, but not under Section 354 IPC.

Statement of the complainant was recorded before the learned trial Court on 19.02.2015 (Annexure P-3). An application under Section 319 Cr.P.C.,

was moved for summoning the present petitioners. The said application was allowed by the learned trial Court vide impugned order dated 04.08.2015

(Annexure P-4). Revision filed by the petitioners challenging order dated 04.08.2015 was dismissed by the learned Additional Sessions judge, Patiala,

vide impugned order dated 31.01.2017 (Annexure P-6). Aggrieved thereof, the present petition has been filed challenging both the abovesaid orders.

Learned counsel for the petitioner vehemently argues that both the impugned orders deserve to be set aside as both the learned Courts below have not

taken into account the entire facts and circumstances of the case. Learned trial Court has summoned the petitioners merely on the basis of the

allegations in the FIR reiterated by PW-1-Amandeep Kaur, the complainant in her examination-in-chief. The allegations against the petitioners were

found to be unsubstantiated and they were accordingly placed in column No.2 of the final report under Section 173 Cr.P.C.

It is further submitted that Zora Singh husband and father of petitioner no.1 and petitioner no.2 respectively, and two of his brothers namely Karnail

Singh and Bhagwan Singh had filed a suit for permanent injunction against the complainant, her husband and sister-in-law for restraining them from

interfering in their peaceful and exclusive possession of the land in question. The said plaintiffs were afforded ad interim injunction on 17.04.2013

restraining the complainant, her husband and sister-in-law from interfering in the peaceful possession of the suit property. Copy of the interim order is

attached as Annexure P-8. The said suit for permanent injunction was ultimately allowed in favour of the husband/father of petitioners no.1 and 2 on

28.11.2016 (Annexure P-9). The present FIR was registered on 22.04.2013 in respect to the incident which allegedly took place on 17.04.2013 at

4.45.p.m. Moreover, the injuries on the person of the complainant as well as her sister-in-law do not justify the summoning of the present petitioners to

face trial in the aforementioned FIR as additional accused. Allegations attracting the rigours of offence punishable under Section 354 IPC were not

found to be correct even qua co-accused-Gurpreet singh, who is facing trial.

Learned counsel for the petitioners places reliance upon the decision of the Hon'ble Supreme Court in Hardeep Singh v. State of Punjab (2014) 3 SCC

92 and Brijendra Singh & others v. State of Rajasthan 2017 SCC

Online SC 491 to contend that summoning of the present petitioners is clearly unjustified in the facts and circumstance of the case. It is thus prayed

that this petition be allowed.

Per contra, learned counsel for the State as well as the complainant have opposed this petition while submitting that the impugned orders are well

reasoned, logical and in consonance with the material on record. Learned counsel for the complainant submits that no reliance can be placed on the

report of the Deputy Superintendent of Police (Annexure P-2), wherein it is stated that inquiry was made from the 'general public' of the village. The

same cannot be the basis of finding the petitioners innocent. The petitioners are clearly mentioned at the very outset in the FIR as well as in the

statement of the complainant before the learned trial Court. The role played by them is clearly detailed. It is thus prayed that this petition be dismissed

and the impugned orders be upheld.

Heard learned counsel for the parties and have gone through the file with their able assistance.

There is no dispute that the incident in question is alleged to have taken place at about 4.45 p.m. on 17.04.2013, in respect to the construction of wall

on land in dispute. Zora Singh, husband and father of petitioners no.1 and 2 alongwith two of his brothers admittedly filed a suit for permanent

injunction. It is not denied that interim order in their favour was passed on 17.04.2013 itself. The complainant party was restrained from interfering in

the peaceful possession of the complainant. The said suit was ultimately decreed in favour of the plaintiffs as they were found to be in possession of

the property in question. As per the medico legal report dated 17.04.2013, reddish abrasion was found on the right forearm of the complainant with

another contusion near the right wrist. It is further mentioned that the patient was complaining of pain all over the abdomen, chest and back. Sister-in-

law of the complainant-Raj Kumari, was detected with a reddish brown contusion on the right upper arm. Complaint of pain all over abdomen, head

and back is noted. It is not disputed that opinion of a gynecologist in respect to the complainant despite specific advise by the doctor conducting the

medico legal examination is not available on record.

FIR in this case was registered on 22.04.2013 with the addition of Section 354 IPC as well. As per inquiry report dated 30.03.2013, co-accused-

Gurpreet Singh was found to be the only person involved in the matter. No offence punishable under Section 354 IPC was however found to be made

out against Gurpreet Singh, who was proceeded against for the offences punishable under Sections 323, 451 and 506 IPC. PW-1-Amandeep Kaur, in

her statement before the learned trial Court has not raised any such allegation attracting the rigours of Section 354 IPC qua Gurpreet Singh. It

emerged during the inquiry conducted by the Deputy Superintendent of Police, Samana, that the complainant party was asked to refrain from taking

possession of the land in question on the basis of the interim order dated 17.04.2013 granted by the Civil Court in favour of Zora Singh and others. A

petty dispute it is mentioned took place in which the petitioners were not found present.

There is nothing on record, at this stage, to indicate that the inquiry conducted by the Deputy Superintendent of Police, Samana, is tainted or suffering

from some grave infirmity which necessitates the said report to be discarded. In view of the entire facts and circumstances of the case argument

addressed by learned counsel for the complainant that the report of the Deputy Superintendent of Police, Samana, is merely based on the inquiries

made from 'general public' is devoid of any merit.

The learned trial Court proceeded to summon the petitioners while observing that all the petitioners were named in the FIR initially registered against

them and the allegations have been reiterated by the complainant while testifying before the learned trial Court. Learned Revisional Court while

brushing aside the argument that the petitioners had been summoned vide a non-speaking order observed that even if the learned trial Court has not

expressed its opinion in so many words, it does not mean that the same is a non-speaking order reflecting non application of mind. Without dealing with

the contentions raised by the petitioners, their revision petition was dismissed in a perfunctory manner by the learned Revisional Court on 31.01.2017.

The factual matrix of the case reveals that there is indeed no such justifiable material on record, at this stage, which would justify summoning of the

petitioners as additional accused in the aforesaid proceedings.

The Hon'ble Supreme Court in Hardeep Singh's case (Supra) held as under:-

95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section

319 Cr.P.C., though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this

Court in *Vikas v. State of Rajasthan* (2014) 3 SCC 321, held that on the objective satisfaction of the court a person may be "arrested" or

"summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has

committed an offence for which such person could be tried together with the already arraigned accused persons.

Xx xx xx

105. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the

circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person

may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court

that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil

of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more

than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would

lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319

Cr.P.C. the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from

the words "for which such person could be tried together with the accused". The words used are not "for which such person could be

convicted". There is, therefore, no scope for the court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

The aforesaid view was reiterated by Hon'ble the Supreme Court in *Brijendra Singh's case* (Supra). In the present case, there is no such strong and

cogent evidence at this stage which would compel the Court to conclude the existence of something more than a prima facie case but short of

satisfaction to an extent that the evidence if it goes unrebutted would lead to conviction.

In this view of the matter, impugned order dated 04.08.2015 summoning the petitioners to face trial as additional accused as well as order dated

31.01.2017 is set aside. This petition is accordingly allowed. It is clarified that none of the observations in this order are an expression of opinion on the

merits of the case qua the accused facing trial and shall have no bearing on the trial qua him/them. Neither would it be a bar to summon the petitioners

in case any fresh, relevant evidence comes on record.