

Palwinder Singh

..... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRIPresent: Mr.HPS Ghuman, Advocate
for the petitioner.**RITU BAHRI, J. (Oral)**

This petition under Section 482 of Criminal Procedure Code is for quashing the order dated 29.11.2014 (Annexure P-4) passed by learned Sessions Judge, Kapurthala vide which the order dated 14.05.2014 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Phagwara has been set aside and application under Section 319 Cr.P.C. of the petitioner has been dismissed.

As per the allegations made in the FIR, on 09.06.2010, complainant-Palwinder Singh was present in the plot situated on the backside of his house. In the meantime, Nath Singh, Darshan Singh sons of Saudaghar Singh, Lal Singh, Balbir Singh, Ranjodh Singh son of Nath Singh and Billa son of Darshan Singh residents of Bhagana, came there. Nath Singh told the complainant that they had purchased 10 marlas of land from his brother Sukhvinder Singh. Upon this, the complainant told that they could fill the foundation of wall after partition of the said land. Thereafter, they started laying foundation. When the complainant tried to stop Nath Singh from doing so, he raised a lalkara to kill him. Thereafter,

they inflicted injuries on the person of Palwinder Singh. The occurrence was witnessed by his neighbour Shamsheer Singh son of Karnail Singh and his son Jaswinder Singh. The injuries have been attributed to Darshan Singh with kirpan. Ranjodh Singh gave a fist blow on his left ear and he had fallen on the ground. Jaswinder Singh was given injuries by the accused when he made efforts to rescue him.

During investigation, Lal Singh and Jasvir Singh @ Billa were found innocent as no injury had been attributed to them. As per the deposition of the complainant Palwinder Singh, PW4 (Annexure P-2) that his son Jaswinder Singh received injuries on his left bicep and left wrist which were attributed to Balbir Singh and Billa. A further perusal of Annexure P-2 made by Palwinder Singh shows that there is a slight improvement in deposition as compare to the allegations in the FIR. During the investigation, both Lal Singh and Jasvir Singh @ Billa were found innocent. During trial, there was no evidence except the deposition of complainant Palwinder Singh PW4 (Annexure P-2). There is no other evidence recorded at the pre-trial stage which can be looked into and from which it would be clear that Lal Singh and Jasvir Singh @ Billa had committed any offence. The revisional Court has rightly dismissed the application filed under Section 319 Cr.P.C. The Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others, 2014 (1) RCR (Criminal), 623** has examined the provision of Section 319 Cr.P.C. and held that the extraordinary power has to be exercised only on the basis of evidence adduced before the Court. However, without any cogent evidence, the application under Section 319 Cr.P.C. is not to be allowed.

The relevant part of the judgement is reproduced as under:-

“Q. IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused ? Whether the power under Section 319(I) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of trial- therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.”

In the present case, no injury has been attributed to Lal Singh and Jasvir Singh @ Billa and a mere statement given by complainant- Palwinder Singh by making slight improvement in his version cannot be held as evidence sufficient under Section 319 Cr.P.C. No ground is made out to summon Lal Singh and Jasvir Singh @ Billa to stand trial.

Accordingly, finding no merits in the petition, the same is hereby dismissed.

(RITU BAHRI)
JUDGE

13.01.2015
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