

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Misc. No.M-15770 of 2013(O&M)

Date of Decision: 14.05.2015

Sulakhan Singh & Ors.

.. Petitioners

Vs.

State of Punjab

.. Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. Inderjit Sharma, Advocate
for the petitioners.**

Mr. Deep Singh, AAG Punjab.

**Mr. N.K. Vadhera, Advocate
for the complainant.**

ANITA CHAUDHRY, J.

The petitioners are aggrieved of order dated 02.04.2014 passed by the Additional Sessions Judge, (Fast Track Court), Gurdaspur vide which they have been summoned to face trial as additional accused in FIR No. 88 dated 22.08.2010, registered under Section 313 IPC at Police Station Sri Hargobindpur, Batala.

The facts leading to the institution of present petition are being noticed first. Complainant Daljit Singh, husband of Ranjit Kaur, got a case registered against his brother Harjit Singh, father Sulakhan Singh, mother Sukhwinder Kaur and Baljit Kaur wife of Harjit Singh. He has

some property dispute with them. The allegations made were that he was away from home on 24.03.2010. On return, his wife told him that his father, Sulakhan Singh and brother Harjit Singh had trespassed into the house and had given kick blows on her abdomen, resulting in a miscarriage.

Initially, the case was not registered by the police. The complainant approached the higher police authorities and later the case was registered against Harjit Singh, Sulakhan Singh, Sukhwinder Kaur and Baljit Kaur.

An application for re-investigation was filed by the accused. DSP City Batala, on enquiry found the involvement of Harjit Singh. The present petitioners were found innocent. Final report under Section 173 Cr.P.C. was filed against Harjit Singh only.

During trial, Ranjit Kaur and the complainant Daljit Singh appeared as PW1 and PW3 respectively and named the present petitioners.

The prosecution then filed an application under Section 319 Cr.P.C. seeking summoning the present petitioners as additional accused.

As noticed above, vide order dated 02.04.2013 the application was allowed and the present petitioners have been summoned to stand trial.

I have heard learned counsel for the parties and have gone through the paper book very carefully.

It has been argued by learned counsel for the petitioners that the petitioners have wrongly been summoned as no specific role has been attributed to the present petitioners in the FIR. It was urged that it was for this reason that the police did not file challan against both of them. It was urged that the complainant and Ranjit Kaur made improvements at every stage, viz. during investigation, re-investigation and trial because they were having property disputes. It has been contended that provisions under Section 319 Cr.P.C. have wrongly been invoked. Reliance has been placed on **Sarojben Ashwin Shah etc. Vs. State of Gujarat & Ors. 2011(3) RCR (Crl.) 852, Lal Suraj @ Suraj Singh & Anr. Vs. State of Jharkhand 2009(1) RCR(Crl.) 504, Mohd., Shafi Vs. Mohd. Rafiq & Anr. 2007(2) RCR(Crl.) 762, Michael Machado & Anr. Vs. Central Bureau of Investigation & Anr. 2000(2) Crimes 23, Santosh Kaur Vs. State of Punjab & Ors. 2012(2) RCR(Crl.) 613, Babu Singh Vs. State of Punjab & Ors. 2010(1) RCR(Crl.) 895, Gurmeet Kaur Vs. State of Punjab & Anr. 2010(1) RCR (Crl.) 195, Ganesha Vs. State of Haryana & Anr. 2007 (2) RCR(Crl.) 633, Smt. Rajjo & Anr. Vs. State of**

Haryana & Anr. 2006(3) RCR(Crl.) 635 and Manoj Kumar Vs. Prabhu Ram, 2003(4) RCR(Crl.) 887.

On the other hand, learned State counsel does not dispute that the petitioners were found innocent during investigation. However, he along with counsel for the complainant has supported the impugned order. It has been urged that the complainant and his wife have deposed specifically about their involvement and were rightly summoned to face trial.

In **Hardeep Singh Vs. State of Punjab & Ors. 2014(3) SCC 92**, Hon'ble Apex Court deliberated the issue of exercise of powers under Section 319 Cr.P.C. While dealing with the question as to the degree of satisfaction required for invoking the power under Section 319 Cr.P.C., plethora of judgments were taken into account and it was observed as under:-

98. 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.

99. 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 unrebutted, 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."

In ***Krishnappa v. State of Karnataka, 2004 (4)***

RCR (Criminal) 678, the Court ruled that the power to summon an accused is an extraordinary power conferred on the Court and it should be used very sparingly and only if compelling reasons exist for taking cognizance against the person other than the accused.

The Apex Court in ***Sarabjit Singh and another v. State of Punjab and another*** reported as 2009(3) RCR (Criminal) 388 observed as follows:-

"17. The provision of Section 319 of the Code, on a plain reading, provides that such an extraordinary case has been made out must appear to the court. Has the criterion laid down by this Court in Municipal Corporation of Delhi (supra) been satisfied is the question? Indisputably, before an additional accused can be summoned for standing trial, the nature of the evidence should be such which would make out grounds for exercise of extraordinary power. The materials brought before the court must also be such which would satisfy the court that it is one of those cases where its jurisdiction should be exercised sparingly. We may notice that in Y. Saraba Reddy v. Puthur Rami Reddy and Anr. [JT 2007 (6) SC 460], this Court opined:

"...Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates that evidence of witnesses given in Court..."

In Ganesh's case (supra) this Court observed as follows:-

"12. The Court while dealing with an application under Section 319 Criminal Procedure Code is not to be swayed by mere allegations that may come in the statements of overzealous witnesses during the course of trial. If the person named suggestively forms a part of chain of events leading to the commission of an offence, then summoning no doubt is justified but if it merely enlarges the arena of the number of accused because of the misplaced enthusiasm of a complaint to see all those related to the accused in the dock, then such a practice be discouraged and the Court does not have to unwittingly become a tool in the story of vendetta unleashed by complainant or any other witness."

Similar view has been reiterated in the cases of Sarojben, Lal Suraj, Michael Machado, Babu Singh, Gurmeet Kaur, Smt. Rajjo and Manoj Kumar (supra).

It is apparent that for the purpose of forming an opinion to summon a person as an additional accused, the Court must be satisfied that there exists an extra ordinary case for sparingly exercise of jurisdiction. The case in hands needs to be analyzed in view of the law laid down, referred

to above.

A perusal of the allegations in the FIR itself shows that there is no specific role assigned to the present petitioners. In the version given to the police complainant Daljit Singh has stated that he was not present in the house and on return he was told about the incident by his wife Ranjit Kaur. In the FIR he only named his father Sulakhan Singh and brother Harjit Singh for having given kick blows to Ranjit Kaur. Though, during investigations, they attempted to implicate father-in-law, mother-in-law, sister-in-law and brother-in-law, but Ranjit Kaur, during the re-investigation, while responding to the query of the investigating officer had stated that neither her father-in-law, mother-in-law or jethani i.e. the present petitioners had given kick blows on her abdomen. However, Ranjit Kaur made improvements while entering the witness box as PW1. She stated that firstly her brother-in-law Harjit Singh came there and gave fist blow on my abdomen. Thereafter, her father-in-law, mother-in-law and wife of Harjit Singh came and attacked her and gave fist blows on her abdomen, as a result severe pain started in her abdomen. She had a three months' pregnancy, which aborted due to the injuries. Likewise, the complainant made exaggerations and deposed as PW3 that he was told by his wife that Harjit Singh gave a

kick blow in her abdomen, due to which she fell down, while his father Sulakhan Singh and mother Sukhwinder Kaur came out of the room and exhorted Harjit Singh not to leave her. Sukhwinder Kaur caught Ranjit Kaur from her hair and all of them gave beatings to Ranjit Kaur. In the meantime, Baljit Kaur also came there and gave beatings to Ranjit Kaur. In other words, at different stages, both of them presented a different version. So far as involvement of the present petitioners in the alleged offence is concerned, the investigating agency, after thorough enquiry, found the petitioners innocent. No new material was there with the Court below to summon the petitioners as additional accused. It is a well settled proposition of law that an order under Section 319 Cr.P.C. should not be passed only because the first informant wishes to implicate some persons other than the accused. The Courts are required to apply the stringent tests one of the tests is that the Court should come to the reasonable conclusion on the basis of evidence before it that the same is likely to lead to conviction. No finding in this regard has been returned by the trial Court while summoning the petitioners. Even the trial Court overlooked the fact that the complainant and his wife were having strained relations with the present petitioners and petitioner Sulakhan Singh and Sukhwinder

Kaur had disinherited them. On the basis of exaggerated allegations, the trial Court ought not to have exercised the powers under Section 319 Cr.P.C. against the petitioners. No compelling reasons existed for taking cognizance against the petitioners.

Though, it is not relevant, so far as the case of the petitioners is concerned, but it is desirable to mention here that trial against Harjit Singh culminated in his acquittal on 11.05.2015.

The present revision petition is allowed. The impugned order dated 02.04.2013 passed by learned Addl. Sessions Judge, Jalandhar, summoning the petitioners as additional accused and consequent proceedings qua them are set aside.

May 14, 2015
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(ANITA CHAUDHRY)
JUDGE