

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

CRM-M-4963 of 2015
Date of Decision: 19.03.2015

Gurmail Singh
Versus

....Petitioner

State of Punjab and anothersRespondents

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Om Pal Sharma, Advocate
for the petitioner.

SNEH PRASHAR J.(Oral)

1. This is a petition under Section 482 of the Code of Criminal Procedure (for short ' the Cr.P.C.) filed by Gurmail Singh-petitioner praying for quashing of order dated 13.11.2013 passed by learned Judicial Magistrate First Class summoning him as an additional accused invoking the provisions of Section 319 Cr.P.C. as well as the order dated 14.01.2015 passed by learned Additional Sessions Judge dismissing the revision petition by him.

2. A First Information Report No.153 dated 10.07.2011 under Sections 323 and 324 of the Indian Penal Code (for short 'IPC') was registered at Police Station Jodhewal, Ludhiana on the statement of Manjit Singh-respondent No.2. The petitioner and two other persons were named as accused in the first information report. During investigation, on an application given by the petitioner the matter was investigated by Additional Deputy Commssioner of Police, City 4, Ludhiana and finding the petitioner as innocent, a final report under Section 173 Cr.P.C was filed by the prosecution only against the other two persons namely Baljit Kumar and Gaurav Sharma and the name of the petitioner was kept in column No.2.

The accused were chargesheeted and after examination of complainant-Manjit Singh (respondent No.2) an application under Section 319 Cr.P.C. was filed by the prosecution for summoning the petitioner as an additional accused. Learned trial Court allowed the application and summoned the petitioner to face trial alongwith the other accused vide order dated 13.11.2013.

Aggrieved by the order the petitioner preferred a revision petition which was dismissed by the learned Additional Sessions Judge, Ludhiana vide order dated 14.01.2015.

3. Heard the submissions made by Mr. Om Pal Sharma, Advocate representing the petitioner.

4. Learned counsel for the petitioner argued that prior to registration of First Information Report No.153 dated 10.07.2011 by respondent No.2-Manjit Singh, the wife of the petitioner had got registered First Information Report No.9 dated 15.01.2011 under Sections 420, 467, 468, 471 and 120-B of IPC at Police Station Jodhewal, Ludhiana against six persons namely Daljit Singh and Hardeep Singh etc. who at the instance of Manjit Singh had committed forgery in sale/purchase of a plot measuring 300 square yards by the petitioner. The amount of Rs. 10 lacs had been kept by Manjit Singh but because he had given an assurance in the presence of Panchayat that he will return the money, he was not named as an accused by his wife in first information report No.9 dated 15.01.2011. Learned counsel contended that after first information report No.153 dated 10.07.2011 was registered on the complaint of Manjit Singh a thorough enquiry into the allegations was conducted by Additional Deputy Commissioner of Police, City 4, Ludhiana. Statements of all relevant persons were recorded and a

detailed report was prepared in which the petitioner was said to be innocent. The statement of the witnesses revealed that the petitioner was not present at the time of occurrence and no offence was committed by him.

To support his arguments that a person should not be summoned to face trial if no prima facie case was made out against him and that the power of summoning a person as an accused can be exercised only on the basis of fresh evidence brought before the Court and not on the basis of material which had been collected during investigation, learned counsel relied upon *Sarabjit Singh and another Vs. State of Punjab and another 2009(3) RCR (Criminal)389* and *Babubhai Bhimabhai Bokhiria and anothers Vs. State of Gujarat and others 2014(2) RCR (Criminal) 915.*

5. There appears to be no force in the arguments of learned counsel for the petitioner. According to the petitioner himself, Manjit Singh was not named as an accused in First Information Report No.9 dated 15.01.2011 under Section 420, 467, 468, 471 and 120-B of the Indian Penal Code registered at the instance of his wife at Police Station Jodhewal. Nothing has been produced to show any kind of connection of complainant Manjit Singh with the allegations contained in the said case of the accused named therein. Therefore under the garb of the said first information report, it does not lie in the mouth of the petitioner to say that he had been falsely implicated by complainant-Manjit Singh. In his complaint which formed the basis of First Information Report and subsequently when he appeared in the witness box complainant-Manjit Singh reiterated on oath the allegations against the petitioner. He specifically attributed the injury at the back of his head to the petitioner and stated that it was caused to him with a Kirpan.

The doctor appeared and proved his medico-legal report which corroborated

his version.

6. The basic requirement for invoking Section 319 Cr.P.C. has been explained by the Hon'ble Apex Court in **Michael Machado and another Vs. Central Bureau of Investigation, 2000(2) RCR (Criminal) 75** as under:

“The basic requirements for invoking Section 319 of the code is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It was also held that the discretionary power so conferred by the above said section should be exercised only to achieve criminal justice.”

7. Considering the facts and circumstances, the findings of learned Additional Sessions Judge were as under:

“ The perusal of the FIR reveals that in the FIR, complainant Manjit Singh has levelled specific allegations that Baljit Kumar, Gaurv alongwith Gurmail Singh entered in his house and Gurmail Singh has given Kirpan blow which fell on the backside of his head. This is also the statement given by him to the police on 10.07.2011. Thereafter Manjit Singh has appeared in the witness box as PW-2 and there also he has made specific allegations of giving injury by Kirpan by revisionist Gurmail Singh So there is

specific attribution of causing of injury by the accused/revisionist on the back side of the head of the complainant. Dr. Gorbinder Kaur has appeared as PW-1 in the trial Court proving the injuries on the person of the complainant. So the evidence on the file is sufficient to establish the accused/revisionist Gurmail Singh is prima facie involved in the commission of offence and there is specific allegations of incriminating act committed by the revisionist/accused I.e causing of injury on the back side of the head with the held of kirpan. So when incriminating evidence is there on the file, then the court has ample power to summon the accused who are not sent to face trial by the investigating agency on the basis of evidence before it.”

7. Learned counsel for the petitioner failed to demonstrate any illegality or perversity in the order of learned Additional Sessions Judge arising out of misreading/misappreciation of material available on record. Prima facie, the petitioner was named as an assailant by the complainant. Also, the injury attributed to the petitioner stood corroborated by the medical evidence adduced by the prosecution during trial.

Thus, there appears no ground for intervention in the order of learned Judicial Magistrate/Additional Sessions Judge and the petition is dismissed.

March 19, 2015
rashmi

(SNEH PRASHAR)
JUDGE

