

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Revision No. 3495 of 2013

Date of decision : 10.12.2015

Deen Mohammad

..... Petitioner

versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sarfraj Hussain, Advocate
for the petitioner

Mr. Deepak K. Grewal, DAG Haryana

Mr. S.S. Narula, Advocate
for respondents No. 3 and 4

ANITA CHAUDHRY, J. (ORAL)

The petitioner is aggrieved of the order dated 18.09.2013 passed by the Addl. Sessions Judge, Nuh vide which he dismissed the application filed by the petitioner under Section 319 Cr.P.C. seeking summoning of the additional accused.

It is necessary to first refer to the contents in the FIR. Deen Mohammad lodged an FIR containing the allegations that his nephew Ayub son of Rojdar was murdered by the villagers and the trial was on. The police had challened some persons in that case, the remaining had been exonerated. An application had been filed to get the other assailants summoned and there was pressure upon them for compromising the matter but they had refused and threats were given. On 19.03.2010 at about 10.30 a.m. the complainant alongwith Harun son of Rojdar and Rashidan wife of Harun and their

small child were going to Ferozepur Jhirka on a motorcycle. The motorcycle was driven by Harun. The complainant was sitting behind him while Rashidan alongwith the child was sitting behind the complainant. They had reached near the school when a truck bearing Registration No. HR-55-J-3273 driven by Akbar son of Yunus came from the front side. Wahid and Maksood were also sitting in the cabin. The allegations were that Akbar suddenly turned the vehicle towards their motor cycle with an intention to kill them. The truck came towards them and hit them. The complainant also suffered injuries and he fell unconscious. They were admitted in the hospital by a passerby. Harun suffered grievous injuries and was referred to Safdarjang Hospital, Delhi. The complainant had alleged that there was an old enmity and the driver had intentionally hit them by coming to their side.

The FIR was lodged the next day in the afternoon i.e. on 20.03.2010 around 4.00 p.m. The police challaned Akbar son of Yunus while the names of other two were placed in column No. 2. The case was committed and after charge the complainant stepped into the witnesses box and made a statement also implicating the other two. Thereafter an application under Section 319 Cr.P.C. was filed. The trial Court dismissed the application holding that the witness had improved his statement and had introduced the fact that the truck driven by Akbar was turned on the asking of Wahid and Maksood.

Para 10 of the order passed by Sessions Judge reads as

under:-

“In the application it is being alleged that PW1 Deen Mohammad has been examined whereas perusal of file reflects that Deen Mohammad complainant was examined as PW3 and in his statement it was claimed that accused Wahid and Maksood were sitting in the truck with the driver Akbar and on asking Wahid and Maksood, Akbar turned the truck towards the vehicle of complainant. When the witness was cross-examined this witness claimed that he had stated in his statement Ex. PD to the police that on the asking of Wahid and Maksood Akbar turned truck towards their motorcycle whereas in the statement it is not so recorded and PW3 was duly confronted. Now from the confrontation it is crystal clear that PW3 Deen Mohammad improved the prosecution version while introducing new version that Akbar turned truck towards their motorcycle on the asking of Wahid and Maksood. The improved version is not going to belie the investigation wherein both the accused were found innocent from this improved version no inference can be drawn that the person sought to be summoned as an additional accused had instigated the accused Akbar.”

Aggrieved with the order the complainant has filed this revision petition.

The contention made on behalf of the petitioner is that there were enmity and brother of Harun had been murdered earlier and the trial was going on and there was a motive and they were named in the FIR and the Court had gone wrong in dismissing the application.

Learned counsel for respondents No. 2 and 3 had urged that the FIR had been registered after 20 hours and there were four

persons who were travelling on the motorcycle and it was a simple case of accident and FIR should have been registered under Section 304-A IPC and if the documents appended with the challan are seen it can be seen that the injuries are on the right side and the mechanical examiners' report would also show that the damage to the truck is on one side. It was urged that there were no such allegations in the FIR and it was a belated FIR and it was practically not possible that pillion rider would notice that the other occupants of the truck were asking the driver to bang the truck in the motorcycle and it was on their asking, the driver had driven towards them. It was urged that an accident happens in split seconds and it could not have been noticed. It was urged that the complainant had improved the version before the trial Court and the application was rightly dismissed. It was urged that even Rashidan wife of Harun does not refer to this fact.

It is first necessary to notice the provisions contained in Section 319 Cr.P.C. which reads as under:-

319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re- heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

In Hardeep Singh Vs. State of Punjab & Ors. 2014(3)

SCC 92, Hon'ble Apex Court deliberated on the issue regarding the powers under Section 319 Cr.P.C. Dealing with the question regarding degree of satisfaction required for invoking the power under Section 319 Cr.P.C., numerous judgments were taken into account and it was observed:-

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."

Testing the present case on the touch stone of the principles laid down in ***Hardeep Singh's case (supra)*** it is held that the trial Court rightly declined to exercise the extraordinary power in the case. Neither the complainant nor his wife had assigned any role to them in the first statement to the police. The complainant had indulged in exaggeration to rope in more persons. There was no strong or cogent evidence to summon additional accused. There is no infirmity in the order.

The petition is dismissed.

December 10, 2015

reena

**(ANITA CHAUDHRY)
JUDGE**