

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.1261 of 2015

Date of Decision: May 05, 2015

Ram ParshadPetitioner

Versus

State of Haryana and othersRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Bijender Dhankhar, Advocate for the petitioner.

<><><>

TEJINDER SINGH DHINDSA, J.

The instant revision petition is directed against the judgment dated 25.3.2015 passed by the learned Additional Sessions Judge, Fatehabad in terms of which an application moved by the prosecution under Section 319 of the Code of Criminal Procedure for summoning the private respondents herein, namely, Sunil son of Satpal, Inderpal son of Giani and Surender son of Nathu Ram to face trial as additional accused in case FIR No.125 dated 17.5.2013, registered at Police Station Bhattukalan under Sections 323, 307, 302, 216, 148 and 149 of the Indian Penal Code has been dismissed.

2. It may be briefly noticed that FIR in question was registered on the statement of Chhotu Ram relating to an incident that took place on 16.5.2013 at about 9.00 p.m. The incident is

stated to have its genesis in a dispute relating to possession of a shop in which Ram Parshad (present petitioner), Kuldip and Sandeep are stated to have suffered injuries and Rohtash is stated to have died.

3. Learned counsel appearing for the petitioner would submit that Ram Parshad who was not only an eye witness but also an injured in the occurrence had specifically named the private respondents and such version has been controverted in the testimony recorded of other witnesses, namely, Kuldip and Sandeep. Learned counsel would argue that Sunil and Surender, i.e. private respondents No.2 and 4 respectively, were specifically stated to have been armed with lathies/gandasis and furthermore, while deposing before the trial Court, the present petitioner had even attributed a specific role to Inderpal i.e. respondent No.3 and as such, the trial Court has erred in not exercising its powers under Section 319 of the Code of Criminal Procedure to summon the private respondents as additional accused. It has also been argued that the trial Court while declining the application under Section 319 of the Code of Criminal Procedure has erred in being swayed by the fact that the trial had made considerable progress and prosecution has already examined 22 witnesses and as such, if the application is allowed at such a belated stage, it would amount to starting the trial *de novo*.

4. Learned counsel for the petitioner has been heard at length.

5. Section 319 of the Code of Criminal Procedure reads as under:

“319. Power to proceed against other persons appearing to be guilty of offence:- (1) Where, in the course of any enquiry 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 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.”

6. The extent of power with the Court to summon persons other than the accused under Section 319 of the Code of Criminal Procedure to stand trial in a pending case came up for consideration before the Hon'ble Supreme Court in **Lal Suraj @ Suraj Singh and another v. State of Jharkhand, 2009(1) RCR (Criminal) 504** and it was held as follows:

“The principle of strong suspicion may be a criterion at the stage of framing of charge as all the materials brought during the investigation were

required to be taken into consideration, but for the purpose of summoning a person who did not figure as accused, a different legal principle is required to be applied. A Court framing charge would have before it all the materials on record which are required to be proved by the prosecution. In a case where however the Court exercises its jurisdiction under Section 319 of the Code, the power has to be exercised on the basis of the fresh evidence brought before the Court. There lies a fine but clear distinction."

7. In the recent judgment rendered by the Apex Court titled as **Hardeep Singh v. State of Punjab and others, 2014(1) RCR (Criminal) 623**, it was observed that although only prima facie case is to be established from the evidence led before the Court while exercising power under Section 319 of the Code of Criminal Procedure to summon additional accused but it would require much stronger evidence than mere probability of complicity in the offence of such persons sought to be summoned as additional accused. The test that has to be applied is one which is more than prima facie case as exercised at the stage of framing of charge but short of satisfaction to an extent that the evidence, if gone unrebutted, would lead to conviction. In the absence of such satisfaction, the Court would refrain from exercising its powers under Section 319 of the Code of Criminal Procedure.

8. Adverting back to the facts of the present case, the FIR was registered on the statement of Chhotu i.e. brother of present petitioner and in such statement of Chhotu Ram, the names of private respondents herein did not even figure. In the statement of Ram Parshad petitioner recorded by Investigating Agency, Sunil

and Surrender i.e. private respondents No.2 and 4 respectively were stated to be present at the spot at the time of the alleged occurrence, but no specific injury was attributed to them. However, in the deposition before the trial Court and having been examined as PW1, Ram Parshad has made a clear improvement inasmuch as Inderpal, respondent No.3 who was not even shown to have been present at the spot during the occurrence has now been attributed a lathi blow on the head.

9. In the considered view of this Court, the learned Additional Sessions Judge, Fatehabad while passing impugned order dated 25.3.2015 declining the application under Section 319 of the Code of Criminal Procedure to summon the private respondents herein as additional accused has rightly applied the test laid down in **Hardeep Singh's** case (supra).

10. No infirmity in the impugned order is found. Revision petition is, accordingly, dismissed.

May 05, 2015
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether to be referred to Reporter? (Yes/No)