

CRR-2367-2015

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

CRR-2367-2015

Date of decision: 3.8.2015

Vinay Kamboj

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.JS Chahal, Advocate for the petitioner

SNEH PRASHAR, J.

The present criminal revision has been filed for setting aside order dated 17.4.2015 passed by learned Additional Sessions Judge, Yamuna Nagar vide which application filed under Section 319 of the Code of Criminal Procedure for summoning respondents No. 5 to 9 as additional accused was dismissed.

Petitioner lodged First Information Report No.343 dated 18.6.2014 under Section 307 of the Indian Penal Code and Section 25 of the Arms Act at Police Station City Yamuna Nagar against respondents No.2 to 9. After investigation, respondents No. 5 to 7 were found innocent and they were kept in column No.2 of the final report submitted under Section 173 of the Code of Criminal Procedure and respondents No. 2 to 4 were charge sheeted for commission of offence under Section 307 IPC, whereas Kabal Singh and Sukhpreet i.e.

Respondents No. 2 and 3 were also charge sheeted for commission of offence under Section 25 of the Arms Act.

The submissions made by Mr.JS Chahal, Advocate for the petitioner have been heard.

It was submitted on behalf of the petitioner that a person can be summoned as an additional accused if prima facie there is material on record to proceed against her/him. The petitioner had specifically named respondents No. 5 to 7 and had attributed respective role to them in the First Information Report. Despite that police did not challan them. The complainant-petitioner specifically named them in his deposition before trial Court and there was no reason to doubt their presence at the spot, yet the trial Court ignored the evidence available on record and dismissed the application filed under Section 319 Cr.PC.

To have a clear picture of the complaint given by complainant- petitioner Vinay Kamboj and the deposition made by him before the trial Court on which the petitioner relies upon to plead that respondents No. 5 to 7 be summoned as additional accused, it shall be relevant to refer to the observation of learned Additional Sessions Judge, Yamuna Nagar at Jagadhri in his impugned order dated 17.4.2015 vide which the application of the petitioner filed under Section 319 was dismissed. The same are as under:-

“ In his deposition before the Court, the complainant Vinay PW8 has almost reiterated the version of his complaint Ex.PA while testifying that Mangu and Kabul had fired at him with intention to kill him. He

has mentioned that he had given names of Ashok Mishra, Wazir, Sattu, Parvej and Pappu Bhatia, who were present at the spot, to the police but police did not take any action. Except for the fact that Pappu Bhatia was allegedly driving Duster car, as so mentioned in complaint Ex.PA, no overt act is attributed to Pappu Bhatia in the deposition of PW8 Vinay Kamboj complainant. His version that he had given the names of Ashok Mishra, Wazir, Sattu and Parvej to the police is not corroborated by any document that he had moved any application in that context to the police. The fact remains that even at this stage while testifying in the Court PW8 complainant Vinay Kamboj has not attributed any overt act to Pappu Bhatia, Ashok Mishra, Sattu, Parvej and Wazir. As per allegations two persons fired at him who both have been challaned. It is a case of no injury to the complainant or others and after investigation police challaned three persons.

Xx

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“In the present case, in view of the fact that the complainant has not named Ashok Mishra etc. in his initial complaint Ex.PA and no specific overt act has been attributed to any of the persons sought to be summoned including Pappu Bhatia, hence, at this stage, version of complainant Vinay Kamboj is not prima facie cogent and convincing so as to summon the above said persons as additional accused. As already discussed above, there must be strong and cogent evidence before Court to summon a person as additional accused whereas deposition of complainant

Vinay Kamboj PW8 is found wanting on this aspect as four out of the above five persons sought to be summoned were not named by him earlier and no specific overt act is attributed to any of them.

Indeed, it is a settled proposition of law that invoking the provisions of Section 319 Cr.P.C., the Court either suo-moto or on an application filed before it, has the power to summon a person named or not named in the First Information Report but not charge-sheeted or a person, who had been discharged, but at the same time, it is also important that the power to summon an additional accused is an extraordinary power and should be used sparingly only if compelling reasons exist for taking cognizance against the person sought to be summoned. In **Sarabjit Singh & Anr. vs. State of Punjab, 2009(34) R.C.R. (Criminal), 388 (SC)**, it was held by the Hon'ble Apex Court that a person should be summoned under Section 319 of Cr.P.C. as additional accused only when the Court finds that evidence on record is such which would reasonably lead to conviction of the person sought to be summoned and such power can be exercised only on the basis of some fresh evidence brought before it and not on the basis of materials which have been collected during investigation.

Indeed, for exercising the power conferred under Section 319 of Cr.P.C., the Court has to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if goes un rebutted, would lead to conviction of the persons sought to be added as accused in the case. As noted above, the petitioner-complainant did not attribute any specific role or refer to any particular overt act/conduct either while lodging the

First Information Report or during his deposition in the Court to any of the persons, sought to be summoned as additional accused so as to make out a case against them for commission of offence. Three persons against whom after investigation the challan was presented were charge sheeted and are already facing trial.

Thus, there being no prima-facie evidence against the persons whom the complainant sought to summon as additional accused and there being no ground warranting intervention in the impugned order passed by learned trial court, the petition is hereby dismissed.

3.8.2015
gsv

(SNEH PRASHAR)
JUDGE