

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

**CRR No. 2957 of 2015 (O&M)
Date of Decision: 8.9.2015**

Parmod

--Petitioner.

Vs.

State of Haryana and others

--Respondents.

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Arvind Singh, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

CRM-26103 of 2015

Applicant seeks condonation of delay of 174 days in filing the present criminal revision petition.

After hearing learned counsel for the applicant, instant application is allowed for the reasons stated therein. Delay of 174 days in filing the present criminal revision petition is condoned.

CRM stands disposed of.

Instant criminal revision petition is directed against the order dated 20.11.2014 passed by the learned Sessions Judge, Karnal, whereby application of the petitioner-complainant under Section 319 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeking to summon as many as 10 more persons as additional accused to face criminal trial was partly allowed, thereby summoning seven persons as additional accused, whereas declining summoning of three persons namely Raj Pal-Sarpanch, Sham Singh-Panch and Rajinder. Hence this petition, at the hands of the complainant.

Learned counsel for the petitioner raised the solitary argument that application moved by the petitioner under Section 319 Cr.P.C. ought to have been accepted in toto, by the learned Sessions Judge, thereby summoning all the 10 persons as additional accused to face the criminal trial, because all of them, as a matter of fact, participated in the commission of offence. He refers to the observations made by the learned trial court in para 5 of its impugned order, to contend that the observations were unwarranted, because -petitioner, while appearing as PW1, specifically attributed definite role to the abovesaid three persons Raj Pal-Sarpanch, Sham Singh-Panch and Rajinder that they raised Lalkara. He would next contend that had these three persons not raised the lalkara, other accused might have not opened the attack and the incident could have been averted. He also refers to the relevant part of the statement of the petitioner at Annexure P-5, at page 66 of the paper book, to contend that statement made by the petitioner was in consonance with the allegations levelled in the FIR against these three persons Raj Pal-

Sarpanch, Sham Singh-Panch and Rajinder. He concluded by submitting that since the learned trial judge has misdirected himself, while passing the impugned order, the same has resulted into miscarriage of justice and is liable to be set aside. He prays for allowing the present petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that in the given fact situation of the present case, instant one has not been found to be a fit case warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the impugned order would show that learned trial court has considered each and every relevant aspect of the matter, while passing the impugned order. Petitioner, in his application under Section 319 Cr.P.C., sought summoning of as many as 10 persons as additional accused to face criminal trial. All these 10 persons were put in column No. 2 by the investigating agency, while submitting its report under Section 173 Cr.P.C.

After applying its judicious mind, learned trial court summoned as many as 7 persons namely Ravinder son of Bhoop Singh, Surrender alias Aala son of Jai Pal Singh, Pardeep son of Mithan Singh, Kushal Pal Singh son of Jagpal, Randeep son of Jaipal, Bhoop Singh son of Ghansham Singh, Vikram Singh son of Pritam Singh, all residents of village Brass, Police Station Nissing,

District Karnal.

However, learned Sessions Judge assigned cogent reasons for not summoning the remaining three persons namely Raj Pal-Sarpanch, Sham Singh-Panch and Rajinder as additional accused to face criminal trial, because not even a prima facie case was made out against them. Having said that, this Court feels hesitation to conclude that learned trial court committed no error of law, while passing the impugned order and the same deserves to be upheld.

In fact, in view of the recent Constitution Bench judgment of the Hon'ble Supreme Court in Hardeep Singh Vs. State of Punjab and others, 2014 (3) SCC 92, more than a prima facie evidence is the requirement of law, for the purpose of summoning a person as an additional accused, with the aid of Section 319 Cr.P.C., and not only a prima facie case. However, in the present case, since not even a prima facie case was found made out against the abovesaid three persons, learned trial court was well justified in declining the application of the petitioner qua the abovesaid three persons. In this view of the matter, it can be safely concluded that learned Sessions Judge proceeded on a factually correct and legally justified approach, while passing the impugned order and the same deserves to be upheld, for this reason as well.

As a consequence of the impugned order, whereby seven persons were ordered to be summoned as additional accused with the aid of Section 319 Cr.P.C., total 12 persons are facing criminal trial. However, petitioner is still not satisfied and trying to implicate

maximum number of persons which prima facie shows that petitioner is proceeding on an extraneous consideration, in his endeavour to force as many as 15 persons to face the criminal trial, in spite of the fact that out of 15, 10 persons were found innocent by the investigating agency.

There seems to be no justification on the part of the petitioner to implicate all the family members of accused party, including their distant relatives, to face the criminal trial. Keeping in view such kind of cases wherein complainants are trying to implicate maximum number of persons, for the reasons best known to them, the Hon'ble Supreme Court, by way of its judgment in Hardeep Singh's case (supra), has come to the rescue of persons like Raj Pal-Sarpanch, Sham Singh-Panch and Rajinder, while increasing the degree of incriminating material, against the person sought to be summoned as an additional accused with the aid of Section 319 Cr.P.C.

Before rendering the abovesaid Constitution Bench judgment by the Hon'ble Supreme Court in Hardeep Singh's case (supra), the only requirement for summoning a person as an additional accused under Section 319 Cr.P.C, was a prima face case like in the case of framing of charge. However, that is no more a good law and now, more than a prima facie case has to be made out, for the purpose of summoning a person as an additional accused.

In the present case, what to talk of more than a prima facie case, not even a prima facie case was made out against the abovesaid three persons, so as to summon them with the aid of

Section 319 Cr.P.C. to face criminal trial. Under these circumstances, it is unhesitatingly held that the impugned order passed by the learned Sessions Judge, Karnal, has been found fully justified on facts as well as in law. Since the impugned order is not suffering from any patent illegality, the same deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

8.9.2015
AK Sharma

Whether to be referred to the reporters? Yes/No.