

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

**CRR No. 3187 of 2014
Date of Decision:01.05.2015**

MOHAN SINGH KANDOLA

..... Petitioner

VERSUS

STATE OF PUNJAB

..... Respondent

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sarju Puri, Advocate
for the petitioner.

Mr. Deep Singh, AAG, Punjab.

Mr. R. S. Atwal, Advocate
for the complainant.

ANITA CHAUDHRY J. (ORAL)

The revisionist has assailed the order dated 16.09.2014 passed by the Additional Sessions Judge, SBS Nagar vide which the petitioner had been summoned as an additional accused in FIR No.41 dated 17.05.2011 registered under Sections 450, 307, 323, 379, 148, 149 and Section 25 of the Arms Act.

Notice was given to the respondents who has put in appearance.

Both the sides have been heard.

Learned counsel for the petitioner contends that the petitioner was not named in the FIR and after 17 days a supplementary statement (Annexure P-2) was made and the petitioner was named but it only refers to his presence and no specific role had been attributed. It was urged that the petitioner is a British citizen and the name has purposely have been given so

as to rope in the family. It was urged that the petitioner was not present at the spot and was in a school meeting and the police had verified this fact and had not challaned him and his name was placed in column No.2. He urges that the trial Court has only referred to the evidence and has not recorded any finding whether the petitioner was prima facie guilty of the offence or that there was sufficient material to summon the additional accused in view of the ratio of the judgment of the Hon'ble Apex Court rendered in *Hardeep Singh Vs. State of Punjab and others 2014(1)RCR (Crl.) 623*.

The State counsel as well as the counsel representing the complainant have supported the impugned order and urged that besides the statement given by the complainant, there are other statements recorded under Section 161 Cr.P.C. and the trial Court had satisfied itself before summoning the petitioner. He urges that degree of satisfaction is that of the trial Court.

Responding to the arguments, the counsel appearing for the petitioner had urged that the petitioner and his family live next door and the complainant gave a graphic detail of the incident and he could not have left out the name of the petitioner.

While summoning an additional accused, it is the substantive evidence which comes on record that has to be considered and no other material can be considered. This question was raised and was answered in Hardeep Singh's case.

To appreciate the arguments putforth by the parties, it would be appropriate to extract the relevant part of the impugned order which reads as under:-

"Heard. Perused the record. Also perused the above said authority from Hon'ble Supreme Court of India, wherein it has been held in para-85 that power under Section 319 Cr.P.C. can be exercised at the stage of completion of examination in chief and Court does not need to wait till the said evidence is tested on cross examination for it is the satisfaction of the Court which can be gathered from the reasons recorded by the Court, in respect of complicity of some other person(s), not facing the trial in the offence. The perusal of the record shows that complainant Inderjit Singh has stated in the Court on 04.09.2014 that on 06.05.2011, at about 10-10.15 AM, he along with his friend Sukhjinder Singh son of Baljinder Singh, cousin Baljinder Singh and Massi Varinderjeet Kaur had came to his house and were sitting in the courtyard and taking meals. In the meantime, four vehicles i.e. Range Rover bearing registration of Delhi, Honda City, CRV, one car of dark blue colour Skoda entered into his haveli and four tractors i.e. Mohindra of red colour, Ford 3600 of blue colour, Farm Track and one another Ford tractor entered into his haveli and they stopped their vehicles inside their haveli. From the above said vehicles i.e. cars, Sukhdev Singh, Bhupinder Singh Bhinda, Mohan Singh Kandola, Raja Kandola @ Ranjit Singh, Kewal Singh Kandola, Ruhar Singh, Sukhjinder Singh Delhi, Sonu, alighted from the cars and were armed with pistols. Makhan Singh, Gursewak, Sukhpreet, Charan Dass, along with other 8-10 unidentified persons were on the tractors and they were armed with dandas and

Kirpans. First of all, my father Sukhdev Singh exulted that he is his son Inderjit Singh, should be taught lesson for keeping bad eye on his land and all the said persons on hearing this attacked him. Rather Raja Kandola fired two shots from his pistol with intention to kill him and one shot passed near his right ear and the second shot hit him in the chest on the right side. Sukhjinder Singh accused also fired shots but the same did not hit them. Major Singh @ Makhan and Sukhpreet Singh @ Sukha inflicted injuries on the persons of his friend Sukhjinder Singh with Kirpan which hit on the left side of his head, near left wrist and Gursewak Singh gave danda blow which hit under the left eye of his friend Sukhjinder Singh. The accused raised lalkaras while at the spot and Sukhjinder Singh Delhi while leaving took away the revolver of his cousin Baljinder Singh from the car. The accused fled from the spot after raising lalkaras. The accused attacked on him with intention to kill him and he came to know that all the above said accused a day before the attack met at Paris Hotel and hatched a conspiracy to eliminate him and he further deposed that the motive behind the occurrence is that they are having ancestral property in the village and his father wants to alienate the same and they have been asking him not to do so and they also filed a civil suit regarding the same and injunctions was granted in their favour also. Therefore, in view of the above discussions, I find that sufficient prima facie case is made out to proceed against the accused Mohan Singh Kandola. Hence, Mohan Singh Kandola is ordered to be summoned for 27.10.2014 and to come up for scrutiny of accused on 10.10.2014."

Reading of the above makes it evident that the trial Court has

merely referred to the provisions and the stage at which an additional accused can be summoned. It has then referred to the statement made by the complainant who in the end, names the petitioner. No role is ascribed to him.

In Lal Suraj @ Suraj Singh & Anr.V. State of Jharkhand, 2009(1) R.C.R. (Criminal) 504: a two-Judge Bench of the Apex Court held that "a court framing a charge would have before it all the materials on record which were required to be proved by the prosecution. In a case where, however, the Court exercises its jurisdiction under Section 319 Cr.P.C., the power has to be exercised on the basis of the fresh evidence brought before the Court. There lies a fine but clear distinction."

A similar view has been reiterated by the Apex Court in Rajendra Singh Vs. State of U.P. & Anr., 2007(3) R.C.R. (Criminal) 1022, observing that Court should not exercise the power under Section 319 Cr.P.C. on the basis of materials available in the charge-sheet or the case diary as they do not constitute evidence. The word 'evidence' in Section 319 Cr.P.C. contemplates the evidence of witnesses given in the Court.

The Hon'ble Supreme Court in Hardeep Singh's case (supra) while answering question No.3 held that the word evidence in Section 319 Cr.P.C. means such evidence as is made before the Court, in relation to statements, and as produced before the Court.

It had observed that inquiry by the Court is neither attributable to the investigation nor the prosecution but by the Court itself for collecting information to drawback a curtain that hides something material. It had observed that it is a duty of the Court to do so and therefore, the power to

perform this duty was provided under the Cr.P.C. It had further been held that the test has to be applied is not only a prima facie case to be established from the evidence led before the Court but it requires something more than a prima facie case.

The petitioner is the neighbour of the complainant. He is a British National. He was known to the complainant side. His presence was not spoken by the complainant. It was seventeen days later, that a supplementary statement was made and his name was introduced. He was not challaned by the police and his name was placed in column No.2 of the report prepared under Section 173 Cr.P.C. The prosecution should have lead evidence which was something more than a prima facie case. The trial Court finding that he was named, summoned him without recording its satisfaction.

The impugned order in no manner satisfies the requirement to exercise the power under Section 319 Cr.P.C. The trial Court has not recorded satisfaction for summoning the additional accused.

For the foregoing reasons, the petition is allowed and the impugned order is set aside.

01.05.2015

rittu

(ANITA CHAUDHRY)
JUDGE