

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRR 3458 of 2015 (O&M)

Date of Decision: December 17, 2015

Naresh

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.J.S. Bedi, Sr. Advocate with
Ms. Diya Sodhi, Advocate
for the petitioner.

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M.M.S. BEDI, J.

This is a revision petition against an order dated June 4, 2015 passed by the Additional Sessions Judge, Palwal summoning the petitioner alongwith one Sikander as additional accused in the exercise of powers under Section 319 Cr.P.C. in a case of alleged murder by members of unlawful assembly. The petitioner had earlier been summoned by the Sessions Court exercising powers under Section 193 Cr.P.C. in the light of judgment of **Dharam Pal Vs. State of Haryana**, (2014) 3 SCC 306, without taking the statement of the witnesses on oath, prior to the stage of Section

319 Cr.P.C. The said order was set aside by this Court without prejudicing to rights of the complainant or the prosecution agency to move an application under Section 319 Cr.P.C.

Briefly stated, the FIR No.177 dated May 22, 2012 was registered at the instance of complainant Kaptan Singh alleging that on May 21, 2012 at about 3.00 p.m. his nephew Akash had a tiff with Rahul as a result of which Rahul had given slap and punch to Akash, therefore, the complainant had gone to the house of Vikram with the complaint of Rahul. Vikram felt annoyed and threatened that he would teach a lesson for making a complaint. On the same day at about 6.30 p.m. while the complainant and his son Bhisham, his nephew Prince and Dheeraj were sitting at that time petitioner alongwith Prahlad, Surender and Hansraj sons of Dashrath and Rahul son of Vikram came there armed with weapons and started abusing them. When they were told to stop abusing, three young boys, namely, Sunil, Rohtash and Sikander came on motorcycle on the spot. On their exhortation, Surender fired a shot at the son of the complainant with his country made pistol. The shot hit on the forehead of Bhisham. Hans Raj also fired a shot at Prince with his country made pistol hitting him on the left hand whereas the petitioner also fired a shot from his country made pistol which hit on the left foot of the complainant and whereas non-petitioner Rahul gave a saria blow hitting the complainant on the back. Rahul also allegedly fired from his country made pistol at the complainant which did not hit him whereas Vikram gave a bottle blow at the head of Dheeraj.

Parhlad gave a saria blow on the head of Dheeraj. Sikander also fired at the complainant with an intention to kill him. Sunil, non-applicant also fired many shots with an intention to kill but they had narrow escape. Thereafter 4/5 boys pelted stones and bricks. Thereafter Sunil, Rohtash and Sikander escaped on their motorcycle while firing with their respective weapons whereas complainant alongwith Dheeraj, Prince and Bhisham were taken to hospital in a private vehicle. Bhishan expired on the way before reaching Palwal.

During the course of investigation, petitioner Naresh was found innocent after framing of charges and recording evidence of six witnesses. The prosecution moved an application under Section 193 Cr.P.C. for summoning the petitioner. Said order was set aside by this Court in CRM M- 2780 of 2014 decided on January 29, 2015. After recording the statement of injured Kaptan Singh, the petitioner alongwith Sikander have been summoned as additional accused.

Mr. J.S. Bedi, learned senior counsel for the petitioner has vehemently urged that the petitioner has been wrongly summoned as an additional accused by the trial Court without appreciating the fact that the injury attributed to the petitioner with the firing of the pistol on the foot of Kaptan Singh has not been proved to be injury of fire arm as such prima facie no case is made out against the petitioner for facing trial alongwith other co-accused. Mr. Bedi has argued that initially 8 accused, namely, Vikram, Rahul, Surender, Hem Raj, Prahlad, Harvinder, Rohtash Sharma

and Shambhu were facing trial in Sessions case No.73 of 2014 titled State Vs. Vikram etc.. The petitioner Naresh and one Sikander and Sunil had been found innocent by DSP at initial stage. Statement of Kaptan Singh has been recorded as PW1 in the said trial on October 10, 2013. He had also named the petitioner but the complainant or the prosecution agency had not moved any application under Section 319 Cr.P.C.. Said case is almost at final stage.

An important feature of the cases is that on April 22, 2014, a report under Section 173 (8) Cr.P.C. was submitted against Sunil only wherein once again the petitioner had been found innocent in this case. Since Sunil has been ordered to be tried separately vide order of the Additional Sessions Judge, Palwal, on February 25, 2015, statement on complainant Kaptan Singh had been recorded again in the trial against Sunil where the petitioner has been summoned as additional accused under Section 319 Cr.P.C. It is not out of place to observe here that the further investigation under Section 173 (8) Cr.P.C. has been conducted by the Crime Branch on the request of complainant party.

Mr. J.S. Bedi, learned senior counsel has submitted that since the trial in case State Vs, Vikram etc. and State Vs. Sunil are being conducted separately but before the same trial Judge, Dr.Ashish Kumar, PW19 has been examined in case State Vs. Vikram on May 14, 2015. Doctor has been uncertain in deposing whether any gun shot has been received on the person of Kaptan Singh. Copy of the statement of Doctor

Ashish Kumar as PW19 in other connected case State Vs. Vikram etc. has been placed on record as annexure P-4, wherein the said Doctor has proved the MLR of Kaptan Singh as Ex.PW19/1. In his cross-examination he has stated that he did not remember whether injured Prince and Kaptan Singh had been medically legally examined by the Doctor in his presence or not though he has worked with Dr. I.K. Bansal. On the basis of the MLR, he stated that he was unable to say if there was gun shot injury on injured Kaptan Singh, as per the medical report which was prepared by Dr. I.;K. Bansal. Mr. Bedi has vehemently urged that the summoning of the petitioner as additional accused in the exercise of powers under Section 319 Cr.P.C. is vitiated for the reasons that (i) the petitioner has been found innocent while presenting challan in case arisen out of the same FIR titled State Vs. Vikram etc.; (ii) petitioner was not challaned while presenting challan; (iii) no application under Section 319 Cr.P.C. was filed while Kaptan Singh was examined as PW1 deposing on the same lines as in the second supplementary challan case tried under title State Vs. Sunil; (iv) petitioner had not been challaned even in the supplementary challan presented against Sunil in which trial is being conducted under title State Vs. Sunil; and (v) the medical evidence in the shape of statement of PW20 Dr. Ripesh is sufficient enough to prima facie indicate that injury received by Kaptan Singh on his foot is not established to be a gun shot injury.

He urged that the summoning of the petitioner in case State Vs. Sunil as an additional accused would be an illegality and abuse of process of

the law and will be a glaring impropriety. He has also argued that a cross-version has also been got registered from the side of the petitioner at the instance of Anita wife of Surender vide complaint made under Section 156 (3) Cr.P.C., copy of which has been appended as annexure P-7, wherein it has been alleged by her that on May 21, 2012 pursuant to a dispute between Rahul and Akash, a dispute arose when Vikram Singh armed with gun accompanied by five other persons named in the complaint came to the house of the complainant and caught-hold of Surender and Hem Raj, her brother-in-law and gave injuries with different weapons at the hands of Kaptan Singh and others. The fate of complaint annexure P-7 is not specified.

Learned trial Court while summoning the petitioner as additional accused has observed that petitioner has been attributed an injury with pistol on the foot of PW1 Kaptan Singh but the appreciation of medical evidence produced in the parallel challan in case State Vs. Vikram etc. cannot be appreciated at this stage to be corroborative nature or not. Whether the ocular version of Kaptan Singh is corroborated by the medical evidence or not, cannot be analyzed at this stage.

During the course of arguments it has transpired that Kaptan Singh as well as the petitioner both are police officials. One is posted in State of Haryana and another in Delhi. Said fact is not relevant for adjudication of this petition under Section 319 Cr.P.C. The culpability of the petitioner for the purpose of Section 319 Cr.P.C. is to be determined

taking into consideration the stage of the case, the stage at which the application has been filed; the prima facie strength of the evidence whether there is prima facie chance of conviction and whether the material produced on the record is of such a nature that it would warrant the trial of the additional accused alongwith the other accused.

In the present case, the prosecution side is adamant for summoning of the petitioner for trial on the allegations that the petitioner was present on the spot and that he fired with his pistol causing injury on the foot of Kaptan Singh. No straight jacket formula is available on the basis of the principles laid down in **Micheal Machado Vs. CBI and another**, 2000 (2) RCR (Crl.) 75 as well as in **Hardeep Singh Vs. State of Punjab**, Crl. Appeal No. 1750 of 2008, decided on January 10, 2014 wherein whether prima facie case warranting conviction is to be looked into or it should be something more than prima facie case but less than the expectation of conviction but the parameters laid down in **Micheal Machado's** case (supra) lays down that the discretionary power of the Court to summon additional accused has to be used in exceptional circumstances, judicially with regard to various factors including the stage at which the trial is proceeded already and the quantum of the evidence collected and time spent by the Court in collecting evidence. It is also not out of place to observe here that when one of the parties is over-zealous to seek the trial by impleading the additional accused with a vindictive mind it is always open to the Court to decline the

application under Section 319 Cr.P.C. leaving the parties to avail the remedy available to them in accordance with law.

In the present case, impugned order has been passed summoning the petitioner as additional accused at a very belated stage when a large number of witnesses stand already examined in case State Vs. Vikram Singh and the case filed on the basis of the supplementary report under Section 173 (8) Cr.P.C. i.e. State Vs. Sunil.

I have carefully considered the contentions of learned counsel for the petitioner Mr. J.S. Bedi who has urged that the petitioner has been found innocent when the challan was presented against 8 accused persons including Vikram Singh and others in which trial is almost at final stage; no application under Section 319 Cr.P.C. having been filed to summon the petitioner as additional accused; Kaptan Singh was examined as PW in that trial against Vikram and others; the crime branch has also not found the petitioner prima facie guilty while presenting supplementary challan under Section 173 (8) Cr.P.C. on April 22, 2014; petitioner having been found innocent in the first as well as second investigation; and the petitioner having repeatedly been found innocent, the suspicion against him is ill-founded and the medical evidence in the parallel trial is not indicative of the fact that the injury received by the complainant on the foot is a gunshot injury.

I have considered all the contentions Mr. J.S. Bedi very carefully and tried to determine the culpability of the petitioner in the light

of the judgment of the Apex Court in **Hardip Singh's** case (supra) as well as various parameters laid down in large number of judgments in this context including the judgment in **Micheal Machedo's** case (supra). All the circumstances mentioned by learned counsel for the petitioner may be a pointer towards the doubts which could be beneficial to the petitioner to seek acquittal but the fact that he is being named from the very beginning to have approached the complainant alongwith other accused and he allegedly being member of unlawful assembly and had even fired a shot at the complainant hitting him on the foot, cannot be ignored at this stage to give a dictum that he is entitled to acquittal. The medical evidence which is relied upon by the petitioner in the connected case is the statement of a Doctor who had not himself examined the injuries on the person of Kaptan Singh as such it will be premature to prima facie form an opinion that the ocular version is not supported by the medical version for the purpose of determining the role of the petitioner. It is not always possible for a Court while adjudicating upon an application under Section 319 Cr.P.C. to appreciate the evidence at a premature stage and to give a decision whether the circumstances of a particular case has brought on the basis of the evidence produced and prima facie sufficient enough to warrant conviction or the evidence is debatable or doubtful, s far as the conviction is concerned. It will not be possible for this Court to form an opinion regarding the truthfulness of the testimony of a PW as the fates of other accused have to be determined on the basis of the creditworthiness of the said witness. It will be inappropriate for this Court at

this stage to decide whether it is a case where the complainant is over-zealous to implicate the petitioner as an accused or there are other extraneous circumstances for the investigating agency to find the allegation of the complainant as untruthful.

In view of the above circumstances and the circumstance that the co-accused of petitioner Sikander Singh who has been summoned, has opted to contest the trial and to prove his innocent by impeaching the credibility of the complainant during trial.

In view of the above, without expression of any opinion on merits and without holding as whether the evidence against the petitioner is sufficient enough to warrant conviction or that he could be given benefit of doubt, I do not deem it appropriate to set aside the order of summoning the petitioner as additional accused. The petitioner has been granted the concession of pre-arrest bail alongwith his co-accused Sikander Singh. All the pleas taken up by Mr. J.S. Bedi, learned senior counsel may constitute a good ground to impress upon the trial Court to grant the benefit of doubt to the petitioner but avoiding any comments at this stage on appreciation of evidence, this petition is dismissed. Nothing said in this order will effect the rights of the prosecution or the petitioner, in any manner.

December 17, 2015
sanjay

(M.M.S.BEDI)
JUDGE