

In the High Court of Punjab and Haryana at Chandigarh

CRR-3994 of 2014

Date of Decision: 20.02.2015

Gunjan alias Rudra Sharma and another

---Petitioners

versus

State of Punjab

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Baljinder Singh, Advocate
for the petitioners**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

REKHA MITTAL, J.

The present petition lays challenge to the order dated 28.11.2014 passed by the Additional Sessions Judge, Mohali whereby the petitioners Gunjan alias Rudra Sharma and Rishi sons of Harish Kumar have been summoned as additional accused by invoking provisions of Section 319 of the Code of Criminal Procedure (in short "Cr.P.C.") to face trial along with Happy Sharma and others pertaining to FIR No. 14 dated 25.1.2011 for offence punishable under Sections 307, 324, 323, 148, 149 of the Indian Penal Code (in short "IPC") at Police Station Dera Bassi, District SAS Nagar Mohali.

The petition filed by Gunjan @ Rudra Sharma was dismissed as withdrawn vide order dated 15.12.2014 and notice of motion was issued

only qua petitioner No. 2 namely Rishi.

Counsel for the petitioner contends that Rishi has not been named in the FIR lodged at the behest of injured complainant Satpreet Singh. Satpreet Singh was examined during trial and he has introduced name of Rishi to be present on the spot being brother of Gunjan @ Rudra Sharma to whom overt act has been attributed. It is argued that vague allegations raised against the petitioners after three years of the occurrence cannot form basis to summon the petitioner as an additional accused in the light of settled position in law that power under Section 319 Cr.P.C. is extraordinary in nature and to be used sparingly.

Counsel for the State, on the contrary, has supported the impugned order.

I have heard counsel for the parties and perused the records.

The trial court, in the concluding para of the order impugned has held that discretionary power under Section 319 Cr.P.C. to summon the additional accused is required to be exercised as there is substantive evidence against them and it would be more appropriate if they be tried along with other accused. The Court passed the order summoning Gunjan @ Rudra Sharma and Rishi through non-bailable warrants of arrest.

In para 07, in the concluding lines, there is reference to statement of the complainant wherein he has referred to the names of Gunjan and Rishi Sharma. A relevant extract from his testimony reads as follows:-

“I have not seen the accused Gunjan and Rishi Sharma today in the Court. They have also caused injuries to me on the day of

occurrence.”

Counsel for the State has not disputed that in the FIR registered in January 2011, there is no reference to the name of Rishi Sharma. In the statement recorded before the Court, the complainant has not attributed any specific role to petitioner Rishi. The trial court, without application of mind and appreciation of settled position in law has proceeded in a casual manner to summon the petitioner to face criminal proceedings when otherwise summoning a person as an accused is a serious matter.

Keeping in view the facts and circumstances of the instant case when examined in the light of ratio laid down in *Hardeep Singh vs. State of Punjab and others 2014 (1) RCR (Criminal) 623* more particularly the nature of satisfaction to be recorded for summoning an additional accused culled out in para 99 of the aforesaid judgment, I have no hesitation to hold that the order passed by the trial court summoning Rishi petitioner reflects complete non-application of mind and arbitrary exercise of discretion, thus, cannot be allowed to sustain.

In view of what has been discussed hereinabove, the petition is partly allowed, impugned order dated 28.11.2014 is set aside qua Rishi son of Harish Kumar.

(REKHA MITTAL)
JUDGE

20.02.2015

PARAMJIT