

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

Crl. Revision No. 441 of 2015(O&M)

Date of Decision: 11.09.2015

Sukhpal Singh @ Pali Singh & Ors.

.. Petitioners

Vs.

State of Punjab & Ors.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. P.K.S. Phoolka, Advocate
for the petitioners.**

Mr. Deep Singh, AAG Punjab.

ANITA CHAUDHRY, J.

The petitioners are aggrieved of order dated 18.11.2014 passed by the Additional Sessions Judge, (Fast Track Court), Bathinda, vide which they have been summoned to face trial as additional accused in FIR No. 07 dated 27.02.2014, registered under Sections 308, 323, 341 and 149 IPC, at Police Station Nandgarh.

The facts leading to the institution of present criminal revision petition are being noticed first.

On 26.02.2014 an altercation had taken place between Jagsir Singh and Rupinder Singh @ Lali. The matter was got compromised by the Panchayat in the presence of

Raja Singh, Kulwant Singh @ Bhola, Ghappa Singh, Gurdeep Singh, Palli Singh sons of Ajmer Singh. When the parties were about to leave after the compromise, there was exchange of hot words between Rupinder Singh @ Lalli and Raja Singh. Harbans Singh tried to intervene, but then Pali Singh gave a dang blow on the back side of head of Harbans Singh. Dr. Raja Singh, Kulwant Singh @ Bhola, Gurdeep Singh, Ghappa Singh encircled the complainant side. Dr. Raja Singh gave a '*faura*' blow on the head of Rupinder Singh and the remaining persons inflicted injuries with sticks to them. Meantime, 5-7 unknown persons who were standing on the roof of the house started throwing brick bats on the complainant side. Harbans Singh and Rupinder Singh @ Lalli had suffered injuries in the incident.

On the statement made by Harbans Singh, FIR was registered. Investigations were commenced. Challan was filed against Raja Singh and Kirpal Singh @ Ghappa. The petitioners were found innocent. Their names were kept in column No.2 of the challan.

After charge, statement of the injured PW Rupinder Singh was recorded. Thereafter an application under Section 319 Cr.P.C. was moved and the prosecution wanted to summon eight persons, namely, Pali Singh, Kulwant Singh @ Bhola, Gurdeep Singh sons of Ajmer

Singh, Jagga Singh, Dr. Nirmal Singh, Tari Singh, Jassa Singh and Ajaib Singh. The application was opposed and reply was filed. The application was partly allowed to the extent of present petitioners. The remaining persons named in the application were not summoned.

I have heard learned counsel for the parties and have gone through the paper book very carefully.

At the outset, learned counsel for the petitioners did not press the instant petition qua petitioner No.1 Sukhpal Singh @ Pali Singh. Therefore, the petition stands dismissed being not pressed, qua him.

So far as petitioners No.2 and 3 are concerned, it was urged that they have wrongly been summoned and no overt act had been attributed to them in the FIR as well as in the statement of the injured, except that they encircled the complainant and injured. It was further urged that the version that they inflicted injuries with sticks belies from the medical evidence as Harbans Singh injured was having only one injury and Rupinder Singh had two injuries. According to learned counsel, petitioners No.2 and 3 are the brothers of main accused Raja Singh and they had been named in the FIR just to widen the net. It was urged that the police found them innocent and did not file challan against them. It has been contended that provisions under Section 319 Cr.P.C.

could not have been invoked.

On the other hand, learned State counsel does not dispute that the petitioners were found innocent during investigation.

In Hardeep Singh Vs. State of Punjab & Ors.

2014(3) SCC 92, Hon'ble Apex Court deliberated on the issue regarding the powers under Section 319 Cr.P.C. Dealing with the question regarding degree of satisfaction required for invoking the power under Section 319 Cr.P.C., numerous judgments were taken into account and it was observed:-

98. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

99. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his

complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

In ***Krishnappa v. State of Karnataka, 2004 (4)***

RCR (Criminal) 678, the Court ruled that the power to summon an accused is an extraordinary power conferred on the Court and it should be used very sparingly and only if compelling reasons exist for taking cognizance against the person other than the accused.

The Apex Court in ***Sarabjit Singh and another v. State of Punjab and another reported as 2009(3)***
RCR (Criminal) 388 observed as follows:-

"17. The provision of Section 319 of the Code, on

a plain reading, provides that such an extraordinary case has been made out must appear to the court. Has the criterion laid down by this Court in Municipal Corporation of Delhi (supra) been satisfied is the question? Indisputably, before an additional accused can be summoned for standing trial, the nature of the evidence should be such which would make out grounds for exercise of extraordinary power. The materials brought before the court must also be such which would satisfy the court that it is one of those cases where its jurisdiction should be exercised sparingly. We may notice that in Y. Saraba Reddy v. Puthur Rami Reddy and Anr. [JT 2007 (6) SC 460], this Court opined:

"...Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates that evidence of witnesses given in Court..."

Similar view has been reiterated in the cases of

Asha Rani Vs. State of Punjab 2014(7) RCR(Crl.) 238,
Suman Ashok Kumar Vs. State of Punjab 2012(4) CCR
115, Dalpreet Singh & Ors. Vs. State of Punjab & Ors.
2012(6) RCR(Crl.) 2315 and Sukkhu Raidas & Ors. Vs.

State of U.P. & Anr. 2011(6) RCR(Crl.) 2582.

It is apparent that for the purpose of forming an opinion to summon an additional accused, the Court must be satisfied that there exists an extra ordinary case for exercise of jurisdiction. The case in hands needs to be analyzed in view of the law laid down referred to above.

A perusal of the allegations in the FIR itself shows that there is nothing specific so far as involvement of petitioners No.2 and 3 is concerned. They were stated to have only encircled the complainant and the injured, but no overt act had been attributed to them. In a casual manner it was stated in the FIR that the remaining accused inflicted injuries with sticks to them, though no specific role was assigned to petitioners No.2 and 3. Petitioners No.2 and 3 are brothers of main accused Raja Singh and it appears that they had been named just to widen the net. Their presence and participation was doubted by the investigating agency and for this reason, they were not challaned by the police. No new fact was there with the Court below to prima facie satisfy the sine qua non for summoning the petitioners No.2 and 3 as additional accused. It is a well settled proposition of law that an order under Section 319 Cr.P.C. should not be passed only because the first informant wishes to implicate some persons other than the accused. The Courts are

required to apply the stringent tests and mere ipse dixit would not serve the purpose. On the basis of general allegations, the trial Court ought not to have exercised the powers under Section 319 Cr.P.C., which have to be exercised sparingly and only if compelling reasons exists for taking cognizance against the persons other than the accused.

In view of the above, present revision petition is allowed and impugned order dated 18.11.2014 passed by the trial Court to the extent of petitioners No.2 and 3 is set aside.

However, it is made clear that this Court has analyzed the material and evidence on record only in relation to the petitioners No.2 and 3. The observations made are without prejudice to the case on merits qua the other accused.

September 11, 2015
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(ANITA CHAUDHRY)
JUDGE