

In the High Court of Punjab and Haryana at Chandigarh

CRR-624 of 2015

Date of Decision:25.2.2015

Ramesh Kumar

---Petitioner

versus

State of UT Chandigarh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Karan Vir Nanda, Advocate
for the petitioner**

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 order dated 30.9.2014 passed by the Additional Sessions Judge, Chandigarh whereby the application filed by the prosecution under Section 319 of the Code of Criminal Procedure (in short "Cr.P.C.") for summoning Jai Singh, Anil, Lakhan and Raju as additional accused to face trial for offence punishable under Sections 147, 148, 149, 323, 452, 506 of the Indian Penal Code pertaining to FIR No. 347 dated 30.7.2012 has been dismissed.

Ramesh Kumar, petitioner lodged the aforesaid FIR on the allegations that his brother Madan Lal alongwith his family is residing in H.No. 2809 DMC, Chandigarh. On 29.7.2012, there was some altercation

between Madan Lal and Raja, resident of H.No. 2808, DMC, Chandigarh in connection with children. He had gone in front of H.No. 2808 to make Raja to understand and came back to the house of Madan Lal. In the meanwhile, Naresh, Rajesh sons of Bhalla, Deepak son of Babli and Raja resident of H.No. 2808 alongwith Bano resident of H.No. 2832 with 3-4 persons to whom he could identify from their appearance came armed with dandas and brick bats and attacked them. Naresh, Rajesh, Deepak, Bano caused injuries and other boys gave kick and fist blows to Madan Lal and Sunny and while leaving, they threatened that they would bring more persons and kill them.

On completion of investigation, challan was presented against Raja, Rajesh, Deepak, Satpal, Bano and Naresh and they are facing trial. The complainant appeared in the witness box on 18.7.2014. On the basis of his statement in the Court, the additional accused namely Jai Singh, Anil, Lakhan and Raju were sought to be summoned by invoking the provisions of Section 319 Cr.P.C., dismissed by the trial court vide impugned order.

Counsel for the petitioner contends that the Additional Sessions Judge, Chandigarh has committed a serious error in disallowing prayer of the complainant/prosecution to summon the additional accused. It is argued that the trial court has dismissed the application by taking into consideration the number and nature of injuries sustained by the victim(s) referred to in para 07 of the impugned order but has not adverted to culpability of the additional accused for committing offence punishable under Sections 147, 148, 452, 506 IPC. It is vehemently argued that keeping in view the role attributed to the persons summoned as additional

accused, they cannot be allowed to escape their liability.

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

In the first information report lodged by the complainant, there is no reference to the description of persons who accompanied the accused already before the Court. The FIR was registered on 30.7.2012 and on completion of investigation, challan was presented in the court on 4.3.2013. The complainant appeared in the witness box on 18.7.2014 and till that time, there was no material on record in regard to identity of unnamed persons purportedly present at the spot. The complainant in his statement before the court has named Jai Singh, Anil, Lakhan and Raju being companions of accused Rajesh and others. No specific role has been attributed to Jai Singh, Lakhan, Anil and Raju in regard to injuries sustained by the victim. After specifying the role played by Rajesh, Naresh, Deepak and Bano, he has deposed that thereafter all the accused gave fist and kick blows to Madan and his nephew Sunny.

Section 319 Cr.P.C. deals with power of the trial court to summon any person as additional accused and in view of settled position of law, the discretionary power under Section 319 Cr.P.C. is to be exercised with circumspect and sparingly. The Hon'ble Supreme Court of India in ***Hardeep Singh vs. State of Punjab 2014(1)RCR(Criminal)623*** answered five questions referred to the larger bench in regard to scope of Section 319 Cr.P.C. Question No. (iv) formulated in the reference reads as follows:-

“What is the degree of satisfaction required for invoking the power under Section 319 Cr.P.C.?”

The Hon'ble Court on a detailed consideration of various

judgments starting from *Pyare Lal Bhargava vs. The State of Rajasthan AIR 1963 SC 1094* has recorded its conclusion in para 99, a relevant extract therefrom is quoted thus:-

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 unrebutted, 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.”

Perusal of the aforesaid extract makes it manifest that 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 meaning thereby that there must be material on record showing complicity of the additional accused more than that of prime facie case but may be short of satisfaction leading to conviction even if remains un rebutted. In the case at hand, names of Jai Singh, Lakhan, Anil and Raju figured for the first time after about 02 years of the alleged occurrence. There is nothing on record to suggest that these persons were ever produced for identification by the complainant much less an identification parade was conducted during investigation. No specific role has been attributed to the persons sought to be summoned as additional accused. When the facts and circumstances of the present case are examined in the light of ratio laid down in ***Hardeep Singh's case (supra)***, I find myself unable to differ with what has been held by the trial court while rejecting prayer for summoning of additional accused.

For the reasons aforesaid, finding no merit, the petition fails and is dismissed in limine.

(REKHA MITTAL)
JUDGE

25.2.2015
PARAMJIT