

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

Crl.Rev. no.761 of 2015(O&M)

Date of Decision : 23.7.2015

Vinod

....Petitioners

Versus

State of Haryana and another

...Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

- 1)Whether reporters of local newspapers may be allowed to see the judgment?Yes
- 2) To be referred to the Reporters or not?Yes
- 3) Whether the judgment should be reported in the Digest?Yes

Present : Mr. Vishal R. Lamba, Advocate for the petitioner
Mr. Kuldeep Tiwari, Addl. AG, Haryana
Mr. Raman Chawla, Advocate for respondent no.2.

MAHESH GROVER, J.

This petition is directed against the order dated 2.2.2015 of the learned Additional Sessions Judge vide which the prayer of the present petitioner to summon Pawan Kumar as additional accused pursuant to the powers under Section 319 Cr.P.C has been declined on the statement of one Vinod.

It may not be necessary to bring out the prosecution version. Suffice it to say that Pawan Kumar, the person intended to be summoned was specifically named in the FIR and is one of the persons who gave injury to one Kulbir on the head with a danda. Two facts need to be noticed; one that Vinod Kumar himself is injured in the occurrence and Kulbir upon whom Pawan Kumar is said to have inflicted a blow has been incapacitated for life resulting in multiple fractures and physical handicap.

The police during the course of investigation did not find any material against Pawan Kumar and thus exonerated him. It is on account of this that provisions of Section 319 Cr.P.C were invoked by the petitioner

after his statement was recorded. The Trial Court has declined the application by observing as below:-

“9. Keeping in view the aforesaid facts and circumstances of the case I am of the considered view that the discretionary power under Section 319 Cr.P.C is not to be exercised merely because PW-1,i.e complainant has named Pawan in his testimony. Powers under section 319 Cr.P.C is an extra ordinary power conferred upon the court.”

After recording the aforesaid observations it goes on to notice various judgments of the Hon'ble Supreme Court to dismiss the application.

On due consideration of the matter, I am of the view that the Court below has not sufficiently applied its mind to the facts of the case. It has merely paid lip service to the provisions of Section 319 Cr.P.C by dismissing the plea of the petitioner on a simplistic ground that 'merely because complainant has mentioned the name of Pawan Kumar' it may not be necessary to summon the respondent Pawan Kumar as the accused.

The Court has to examine with great circumspection facts in their totality and the evidence on record and its quality before it forms an opinion whether the person is liable to be summoned under Section 319 Cr.P.C or not.

There is no doubt that power under Section 319 Cr.P.C is a discretionary power but it is circumscribed by certain expectations which have largely been brought out by various observations of Hon'ble Supreme Court. Every discretion visited in a Court/authority implies a greater responsibility to exercise it judiciously and therefore sufficient reasons need to be offered by the Court so as to offer an effective judicial review in the

event of its being subjected to one.

Section 319 Cr.P.C is extracted herebelow:-

“319.Power to proceed against other persons

appearing to be guilty of offence: (1)Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2)Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3)Any person attending the Court although not under arrest or upon a summons may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4)Where the Court proceeds against any person under subsection (1) then -

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause(a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

From the perusal of the aforesaid it becomes abundantly clear that the Court visited with such a power cannot take a simplistic view of the

matter as it involves serious repercussions both on account of summoning or declining to summon. The Court is required to give reasons which do not manifest themselves in the impugned order.

For the aforesaid reasons, instant petition is allowed. Matter is remitted back to the Trial Court to offer sufficient explanation by commenting on the evidence that has come on record in relation to the facts that are available. Let needful be done by Trial Court as expeditiously as possible.

Nothing said herein shall be construed to be an expression of opinion on the merits of the case.

July 23, 2015
rekha

(Mahesh Grover)
Judge