

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

CRM-M No.38245 of 2016.

Date of Decision: 25.10.2016.

Karanvir Singh

....Petitioner.

VERSUS

State of Punjab and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sarju Puri, Advocate for the petitioner.

SNEH PRASHAR, J.

This petition has been filed, invoking the provisions of Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C."), by petitioner-complainant Karamvir Singh praying to quash the orders dated 17.05.2016 and 19.08.2016 passed by learned Judicial Magistrate Ist Class, SBS Nagar and learned Additional Sessions Judge, SBS Nagar respectively vide which the application under Section 319 Cr.P.C. for summoning respondent No.2-Sansar Singh as an additional accused was dismissed and the revision petition preferred by the petitioner was also dismissed.

The submissions made by Mr. Sarju Puri, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner submitted that on the statement of the petitioner, First Information Report No.2 dated 09.01.2011 under Sections 457, 380, 323, 447, 511, 506, 427, 148, 149 of the Indian

In his statement, the petitioner had specifically named Sansar Singh (respondent No.2) as an accused as at the time of occurrence he was sitting in the car with Paramjit Kaur, aunt of the petitioner and was advising her. During investigation, the police illegally did not challan Sansar Singh and mentioned his name in column No.2 of the final report filed under Section 173 Cr.P.C. During enquiry into the incident by Superintendent of Police (Detective), SBS Nagar, Sansar Singh was given a clean chit on flimsy grounds. During trial of the case, the petitioner appeared in the witness box and reiterated his allegation against Sansar Singh and specified the role attributed to him during the occurrence. However, learned trial Court erroneously dismissed the application filed by the petitioner under Section 319 Cr.P.C. for summoning Sansar Singh as an additional accused. The revisional Court also committed serious illegality by dismissing the revision petition filed by the petitioner.

To summon a person as an additional accused under Section 319 Cr.P.C. is a discretionary power but this extraordinary power, which is conferred on the Court, should be used judiciously having regard to the facts and circumstances of the case and only if compelling reasons exist for taking cognizance against the person sought to be added as an accused. The order is not to be passed mechanically merely on the ground that some evidence has come on record implicating the person to be added as an accused.

It has been held by Hon'ble Supreme Court in **Hardeep Singh vs. State of Punjab, 2014(1) R.C.R. (Criminal) 623** as under:-

“Power under Section 319 Cr.P.C. is a discretionary and an extra- ordinary 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.

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 the instant case, the facts as noticed by learned revisional Court are recaptured hereunder:-

“In the instant case, after registration of FIR, thorough investigation was conducted by Investigating Agency and accused Sansar Singh was declared innocent and he was kept in column no.2 of the challan. Even if the allegations levelled by complainant Karanvir Singh are taken to be true, it does not prima-facie prove the complicity of Sansar Singh in the commitment of any offence. Furthermore, the statement made by Karanvir Singh in the court as PW-11 is in contradiction to his statement given to the police as Ex.PW-11/A. Karanvir Singh has stated to the police that on the day of occurrence, Sansar Singh was sitting in the car alongside Paramjit Kaur and was giving advice to her, whereas in his examination-in-chief as PW-11, he has improved his version by stating that Sansar Singh was giving instructions to the other accused

persons to demolish wall and electricity meter. Hence, the allegations levelled by Karanvir qua Sansar Singh can not be believed.”

When in the First Information Report, the petitioner had only mentioned presence of Sansar Singh with Smt. Paramjit Kaur (aunt of the petitioner) in the car and had simply stated that he was advising her, which shows that no overt act was attributed to him, but during his statement in the Court, making substantial improvement in his version, he stated that Sansar Singh was giving instructions to the accused to demolish the wall and the electricity meter, the intentional variation in the statement of the petitioner left no scope to believe his testimony as far as participation of Sansar Singh was concerned.

In **Dhrup Singh and others vs. State of Bihar, 2013(4) R.C.R. (Criminal) 228**, it has been held by the Hon'ble Apex Court that just because the petitioner named respondent No.2 as accused, who during enquiry was found to be innocent, would not be enough to prove that the said person had committed an offence for which he should be summoned and tried with the accused already facing trial.

Finding that learned counsel for the petitioner has failed to demonstrate any illegality or perversity in the order of learned trial Court or of the learned revisional Court this petition being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

25.10.2016
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No