

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No.12 of 2015 (O&M)

Date of Decision: 23.07.2016

Ashutosh @ Beenu

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

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

Present:- Mr. B.S. Rathee, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. Rahul Jaswal, Advocate
for the complainant.

HARI PAL VERMA, J.

Through the instant revision petition, petitioner Ashutosh @ Beenu has impugned the order dated 17.12.2014 (Annexure P-1) passed by learned Sessions Judge, Panipat, whereby on an application filed by the public prosecutor under Section 319 CrPC, the petitioner along with other accused has been summoned to face trial, as an additional accused, through non-bailable warrants, for the commission of an offence under Section 302 IPC.

Briefly stated, FIR No.160 dated 2.5.2013 under Section 302 IPC was registered on the basis of statement of complainant – Sonu son of Babu Ram, who is a resident of Vill. Jhand Khera, P.S. Rampura, District

Saharanpur and doing the work of agriculture. His father and uncle are two brothers. His uncle Vijay Pal has two sons namely Vikas and Monu. On 29.4.2013, there was marriage of one Amit son of Kulbir in the village and Vikas had gone in *baraat* in Village Uncha Gaon near Kairana, but he did not return back to home. On making search, they found that Vikas had gone to Haryana and thereafter, the complainant and his brother came to know, through telephone, that Vikas has died near Sanouli Toll Barrier. On the spot enquiry from the surroundings, they came to know that on 29.4.2013, Vikas was roaming near the Toll Barrier in heavily drunken condition and he died due to excess drinking of liquor. The complainant and other villagers have carefully seen the dead body of Vikas. No injury mark or scratches were found on his body. On the basis of aforesaid FIR, post-mortem was conducted and opinion of the doctor was sought, wherein, cause of death was found to be haemorrhage and shock due to injuries to vital organs like right lung and spleen. The injuries were *ante mortem* in nature. It is on the basis of this port-mortem report, case under Section 302 IPC was registered.

During investigation, statement of Anil son of Satpal and Azad son of Surajbhan, who were running a *dhaba* in the name of Maa Bhagwati at Sanoli road near Toll Tax Barrier, were recorded. These witnesses stated that on 29.4.2013, three boys came to their *dhaba* in a Maruti car bearing No.UP-12Q-6294 for taking meals. All the three had already taken drinks and they purchased some eatables from the *dhaba* and started taking more liquor. While taking liquor, they started speaking in loud voice and a scuffle took place between them. Yogesh and Reenu started beating Vikas and in this process, he fell down, but he started abusing the aforesaid two boys. On this, Reenu gave fist and kick blows in the stomach of Vikas and Yogesh gave slaps to Vikas.

Learned counsel for the petitioner has argued that the impugned order dated 17.12.2014 passed by learned Sessions Judge, Panipat has been passed without adhering to the provisions of Section 319 CrPC and the law laid down by Hon'ble the Supreme Court in the case of **Hardeep Singh v. State of Punjab 2014(1) RCR (Criminal) 623.** He argued that during the investigation, on 2.5.2013, statement of Sonu son of Babu Ram (complainant) and Monu son of Vijay Pal (brother of the deceased) were also recorded by the police. The complainant had stated before the police that he had enquired at his own level and had come to know that Yogesh and Reenu had taken the deceased Vikas in their Maruti car in Haryana near Yamuna bridge and after taking drinks, they gave him beatings and due to the injuries, Vikas has died. Learned counsel has further argued that name of the petitioner does not figure in the FIR and even during the investigation, nothing was found against him. None of the eyewitnesses has ever come forward to depose that the petitioner had accompanied the co-accused or the deceased Vikas, nor there is any evidence to show involvement of the petitioner in the alleged offence. The eyewitnesses present in the *baraat* as well as the co-accused, who took the deceased to take liquor and had scuffle among themselves, never named the petitioner or even stated about his presence. Rather, the eyewitnesses have stated that Yogesh and Reenu took the liquor with deceased Vikas and gave beatings to him, due to which, he died. Learned counsel has referred to the statements of Sonu son of Babu Ram and Monu son of Vijay Pal, made by them under Section 161 CrPC and the investigation conducted by the police, in which nothing was found to challan the petitioner. He submitted that the FIR was got registered by Sonu and the summoning of the petitioner has been made on the basis of his subsequent statement, which is in contradiction to his own statement made at

the time of registration of FIR, as well as statement made under Section 161 CrPC. In the FIR as well as statement under Section 161 CrPC, there is no reference of the petitioner that the deceased Vikas had ever gone with the petitioner. For the first time, the complainant Sonu has named the petitioner on the basis of disclosure made by Sukhbir on 30.4.2013. However, said Sukhbir has not been examined and therefore, unless Sukhbir makes some disclosure against the petitioner, summoning of the petitioner is not sustainable.

On the other hand, learned State counsel as well as learned counsel for the complainant have argued that the provisions of Section 319 CrPC clearly empowers the Court to summon any accused if during the course of enquiry or trial, it appears from the evidence that the person not being an accused has committed any offence could be tried together with the accused.

Learned counsel for the State has argued that in view of Section 319 CrPC, an accused can be ordered to be summoned at any stage of the trial and in the case in hand, summoning of the petitioner has been made at very initial stage i.e. at the time of evidence of the complainant itself. Therefore, there is no illegality in the order dated 17.12.2014 passed by the trial Court.

Learned counsel for the complainant has referred to a judgment of Hon'ble the Apex Court in the case of **Hardei v. State of UP 2016(2) RCR (Criminal) 608** to contend that the FIR may not contain all the details of the occurrence or even the names of all the accused. It is not expected to be an encyclopaedia even of facts already known. There are varieties of crimes and by their very nature, details of some crimes can be unfolded only

by a detailed and expert investigation. He referred to para 9 of the judgment in **Hardei v. State of UP** (*Supra*), which reads as under:-

“9. It is well accepted in criminal jurisprudence that F.I.R. may not contain all the details of the occurrence or even the names of all the accused. It is not expected to be an encyclopedia even of facts already known. There are varieties of crimes and by their very nature, details of some crimes can be unfolded only by a detailed and expert investigation. This is more true in crimes involving conspiracy, economic offences or cases not founded on eye witness accounts. The fact that Police chose not to send up a suspect to face trial does not affect power of the trial court under Section 319 of the Cr.P.C. to summon such a person on account of evidence recorded during trial. This is the factual scenario in the case at hand also.”

I have heard learned counsel for the parities.

Having perused the contents of the FIR registered at the behest of complainant Sonu and going through his statement recorded under Section 161 CrPC, it is clear that PW Sonu has not named the petitioner either at the time of registration of FIR, nor during recording his statement under Section 161 CrPC. Accordingly, the police has conducted the investigation and no challan was presented against the petitioner. It is only after the statement of PW Sonu during cross-examination, name of the petitioner has come into the picture. Interestingly, Sonu has stated in his cross-examination that on 30.4.2013, in the morning, Sukhbir had told him that Vikas along with Ashutosh, Yogesh and Reenu had gone to Yamuna Crossing from Uncha Gaon and police has recorded the statement of Sonu only once in the case, which was recorded on 30.4.2013. Further, the allegation that prior to the occurrence, an altercation had taken place

between Vikas and Ashutosh on construction raised on road, was never recorded in the FIR.

There is no dispute with regard to the law laid down by Hon'ble Apex Court in the case of **Hardeep Singh v. State of Punjab** (*supra*), wherein it has been held that under Section 319 CrPC, the Court can summon a person, as an additional accused, though not named in the FIR or though named in the FIR but has not been charge-sheeted or a person who has been discharged. However, the question arises as to what is the nature of satisfaction required for the Court to invoke the provisions of Section 319 CrPC to arraign an accused. The Hon'ble Apex Court has held that under Section 319 (4) (b) CrPC, an accused, subsequently impleaded, is to be treated as if he had been an accused when the Court initially took cognizance of the offence. The degree of satisfaction that will be required for summoning a person under Section 319 CrPC would be same as for framing of charge. In the case of **M.C. of Delhi v. Ram Kishan Rohatagi 1983(1) RCR (Criminal) 73**, Hon'ble Apex Court has held that under Section 319 CrPC, an extraordinary power has been conferred upon the Court, but it should be used very sparingly, only if compelling reasons exist for taking cognizance against other persons against whom action has not been taken. The relevant observations read as under:-

“19. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance

against the other person against whom action has not been taken. More than this we would not like to say anything further at this stage. We leave the entire matter to the discretion of the court concerned so that it may act according to law. We would, however, make it plain that the mere fact that the proceedings have been quashed against respondent Nos. 2 to 5 will not prevent the court from exercising its discretion if it is fully satisfied that a case for taking cognizance against them has been made out on the additional evidence led before it.

Having considered the case of the applicant within the parameters laid down in the case of **Hardeep Singh v. State of Punjab** (supra) and **M.C. of Delhi v. Ram Kishan Rohatagi** (supra) and taking into account the fact that the complainant Sonu has not named the petitioner either at the time of registration of FIR or even in his statement recorded under Section 161 CrPC, this Court finds that no case for summoning of the petitioner is made out.

Accordingly, the present petition is allowed and the impugned order dated 17.12.2014 (Annexure P-1) passed by learned Sessions Judge, Panipat is set aside.

July 23, 2016
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No