

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
Sr. No.: 223

Criminal Revision No.3396 of 2015
Date of Decision: *December 14, 2016*

Gurdayal Singh

..... PETITIONER

VERSUS

State of Haryana & others

..... RESPONDENTS

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: Mr. Sushil Bhardwaj, Advocate, for the petitioners.

Mr. Neelam Kashyap, Deputy Advocate General, Haryana for
respondent No.1 – State.

Mr. Rahul Rathore, Advocate, for respondent No.2 and 3.

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Jaspal Singh, J

1. Challenge in this revision petition is to order dated August 21, 2015 passed by the Additional Sessions Judge, Karnal passed in case FIR No.269 dated July 11, 2014 under Sections 307, 323, 324, 325, 326, 341, 506, 34 IPC registered at Police Station Nissing, whereby an application under Section 319 Cr.P.C. moved by the complainant – petitioner through public prosecutor for summoning Gurmail Singh and Karam Singh as additional accused has been dismissed.

2. Succinctly, instant case was registered on the statement of complainant – Gurdayal Singh. Gurdayal Singh had taken land measuring 7 kanal 7 marlas on lease. Earlier, Kabal Singh used to take it and for this

reason, he was keeping grudge in his mind against the complainant. On July 8, 2014 at about 11:30 AM, when complainant alongwith his son Tarsem Singh was coming to his village from Jalmana, after purchasing diesel on motor cycle, they were attacked by five persons, including Kabal Singh and his servant, near the fields of Joga Singh at Gobindgarh. They stopped their motor cycle and fired shot on complainant and his son but fortunately it did not hit them. Kabal Singh was armed with a sword and gave its blow on complainant which hit on his head. Second blow of sword landed on his right arm. The servant of Kabal Singh gave lathi blow on his leg and right hand. Three persons were in muffled faces and gave lathi blows on the head of son of complainant and blood started oozing from his nose. One of them gave gandasi blow from its reverse side. The servant also gave gandas blow on his left foot from its back side. Thereafter, all the assailants fled away from the spot. Meantime, Gurdev Singh, Kamir Singh, Sukhvinder @ Sukha came at the spot and took them to CHC, Nissing, from where, they were referred to KCMC, Karnal. FIR was registered on July 11, 2014 on the statement of Gurdayal Singh.

3. After completion of investigation, final report under Section 173(2) Cr.P.C. was presented against Kabal Singh and Siri Ram. Kabal Singh is facing trial while Siri Ram has been declared proclaimed offender. Statements of complainant – Gurdayal Singh and his son Tarsem have been recorded in the court. Tarsem Singh, in his statement dated August 5, 2014, has named two more persons, Gurmail Singh and Karam Singh, as assailants alongwith Kabal Singh and Siri Ram, whereafter, an application under Section 319 Cr.P.C. was moved by the prosecution for summoning Gurmail Singh and Karam Singh as additional accused to face trial.

4. Learned counsel for the petitioner has submitted that statement of injured Tarsem Singh was recorded by police on August 5, 2014, in which, he had specifically named Gurmail Singh and Karam Singh. He categorically stated that Gurmail Singh had raised lalkarara and fired from revolver whereas Karam Singh caused injuries on the head of Tarsem Singh with reverse side of gandasi. When statement of Tarsem Singh was recorded in the court, he also named Gurmail Singh and Karam Singh as assailants alongwith accused facing trial. Learned counsel for the petitioner has contended that since Gurmail Singh and Karam Singh participated in the commission of crime, they are also liable to be summoned as additional accused.

5. Learned counsel for the respondent – accused has submitted that there is no prima facie evidence against Gurmail Singh and Karam Singh. Though, Tarsem Singh has named them in his statement, however, his father Gurdayal Singh, who is complainant in this case, did not name the aforesaid persons despite the fact that they were previously known to him. Moreover, police also recorded the statements of Kabal Singh, Kamir Singh, Sukhvinder Singh and Gurdev Singh under Section 161 Cr.P.C., wherein they have named only two persons as assailants and did not name Gurmail Singh and Karam Singh. Before his testimony in Court on August 5, 2014, Tarsem Singh got recorded his statement before police on July 24, 2014, in which, he did not name these persons. Thus, he prayed for dismissal of this revision petition.

6. This court has given an anxious thought to the submissions made by learned counsel for the parties and perused the record.

7. It is settled proposition of law that the material required for summoning a person as additional accused should not be only a prima facie evidence against him in the final report as he is required for framing charge but it should be something more than a prima facie case, before the provisions under Section 319 Cr.P.C. are invoked. In other words, an accused should be added to the trial only when there is a reasonable prospect of case against such accused ending in his conviction.

7. In the case in hand, earlier the statement of Tarsem Singh (injured) was recorded by the police on July 24, 2014, in which, he did not name Gurmail Singh and Karam Singh. It was only during his deposition in court i.e. August 5, 2014, he made allegations against Gurmail Singh and Karam Singh. Even in his statement, he could not explain as to why he did not name them initially when his statement was recorded on July 24, 2014. The occurrence had taken place during day time and if Tarsem had seen these two persons, he must have named them in his statement dated July 24, 2014. There is no supplementary statement of complainant – Gurdayal Singh to the effect that he had come to know the names of Gurmail Singh and Karam Singh lateron. Moreover, the statements of persons, who took complainant and his son to hospital, were recorded by the police and they also did not name Gurmail Singh and Karam Singh.in the backdrop of facts narrated above, the presence of Gurmail Singh and Karam Singh at the time of incident is highly doubtful. Thus, this court is of the considered view that there is no sufficient material, what to talk of a prima facie case, against Gurmail Singh and Karam Singh from the statement of Tarsem Singh and the powers envisaged under Section 319 Cr.P.C. should be excercised very

sparingly, and only when there is a reasonable prospect of case against such accused ending in his conviction.

8. In the light of what has been discussed above, there is no merit in the instant petition and the same is accordingly dismissed.

December 14, 2016
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(Jaspal Singh)
Judge

Whether Speaking or Non-speaking	: Yes/No
Whether Reportable or not	: Yes/No