

CRR-3886-2015 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRR-3886-2015 (O/M)  
Date of Decision : 30.5.2016

Ranvir Singh Saini

..... Petitioner

Versus

The State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.S. Cheema, Senior Advocate, with,  
Mr. Rajiv Kumar Trikha, Advocate, for the petitioner.

Mr. Ashish Yadav, Additional A.G. Haryana.

Mr. J.S. Bedi, Senior Advocate, with,  
Mr. Aman Pal Singh, Advocate, for respondents No. 2 and 3.

Mr. N.S. Sekhawat, Advocate, for respondents No. 4 to 6.

1. Whether the Reporters of local newspaper 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 ?

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KULDIP SINGH, J.

By way of present revision, the petitioner has challenged the order dated 14.9.2015, passed by the learned Additional Sessions Judge, Hisar, vide which his application filed by the petitioner under Section 319 Cr.P.C. for summoning Om Parkash, Vinay Kumar, Lalit Kumar, Parveen Kumar and Om Parkash Pahari as additional accused, has been dismissed.

Briefly stated, FIR No. 864, dated 2.9.2009, was registered at

CRR-3886-2015 (O/M)

-2-

Police Station Sadar, Hisar, under Sections 326, 325, 323, 148, 149, 506 IPC on the statement made by Ram Niwas. While talking about his civil and criminal cases pending against, Om Parkash son of Amar Singh (respondent), it is stated that on 2.9.2009, at 7:00 AM, Ram Niwas alongwith Ranvir Singh Saini, Advocate, left their respective houses for morning walk in front of Bostal Jail and Commissioner's residence towards Mini Secretariat Colony. When they reached little ahead of Commissioner's residence, Manoj Kumar Kataria, Advocate, and Balbir Singh Chamar met them and they started talking to each other. Ranvir Singh moved 10/15 steps ahead. Then, Om Parkash, his son Vinay, Om Parkash Pahari and Ajit Sehrawat in one Swift car of cream colour, bearing registration No. HR-26AP-0034 and four other unidentified boys on two motorcycles came from behind and alighted near Ranvir Singh, Advocate and attacked him with kulhari (axe), rods and lathis, which they were carrying with them. Ranvir Singh fell on the road. Om Parkash gave kulhari (axe) blow on the head of Ranvir and as Ranvir tried to ward off the blow, it hit his left arm. Vinay gave iron rod blow on right leg and head of Ranvir Singh. Ajit Sehrawat and Om Parkash Pahari alongwith other companions started giving rod, lath and sticks blow on the left and right legs and other parts of the body of Ranvir Singh. Ram Niwas and Manoj Kumar, Advocate, tried to save Ranvir Singh, but Vinay and Om Parkash were repeatedly saying that till Ranvir is not killed, he will not abandon the court cases. When noise was raised, all the accused fled away with their respective weapons, car and motorcycles. Thereafter, Ram Niwas arranged for a car and he alongwith Manoj Kumar, Advocate, got Ranvir Singh admitted in Lifetime Hospital,

CRR-3886-2015 (O/M)

-3-

where the doctor started treating the injured. Ram Niwas had gone to City Hisar for arranging the blood. Later on, he approached the police and made statement on 2.9.2009 itself.

The police, after recording the statement, recorded the proceeding that when they reached the hospital, Ranvir was unfit to make the statement. X-ray of the injured was obtained from the doctor. The family of the injured was contacted and after waiting for some time, Ram Niwas (complainant) got recorded his statement, on the basis of which the FIR in question was recorded. It comes out that the police, after conducting the investigation, presented the challan against four persons, namely, Pawan son of Geenu Ram, Sonu son of Dhoop Singh, Ajeet Singh son of Kartar Singh and Satbir son of Jai Lal after adding offence under Section 307 IPC.

I have heard the learned senior counsel for the petitioner, the learned State counsel, the learned senior counsel for respondents No. 2 and 3, the learned counsel for respondents No. 4 to 6 and have also carefully gone through the case.

First of all, the undisputed history of the case is required to be noticed. It is not disputed that when the challan was presented in the year 2010 before the lower Court, the complainant having not satisfied with the same, had moved an application under Section 190 (b) Cr.P.C. before the Court on 5.5.2010 for taking cognizance against four accused, who were not chargesheeted. The said application was dismissed on 14.8.2010. The criminal petition (CRM-M-29602 of 2010) filed against said order before this Court was withdrawn on 6.3.2012. It further comes out that the complainant filed a criminal complaint before the learned Illaqa Magistrate

CRR-3886-2015 (O/M)

~~-4-~~

on 15.11.2010. The same was dismissed on 6.10.2014 and the revision against the same is stated to be still pending before the Court of the learned Additional Sessions Judge, Hisar. Then, an application was filed under Section 319 Cr.P.C. on 2.11.2011 after Ranvir Singh was examined as PW1. The prayer was made for summoning the present respondents. The said application was dismissed by the learned Additional Sessions Judge, Hisar, on 5.10.2013, vide speaking order (Annexure-P-18). The revision (CRR-585-2014), filed against the said order before this Court was dismissed as withdrawn 'at this stage' on 21.5.2014. It also comes out that after some witnesses were examined, another application under Section 319 Cr.P.C. was filed on 13.11.2014 for summoning Balraj, Satpal and Parmesh as additional accused for being conspirators. The said application was disposed of by the learned Additional Sessions Judge, Hisar. The same was partly allowed on 13.11.2014 as the application qua Parmesh was dismissed. However, Balraj and Satpal were summoned as additional accused under Section 319 Cr.P.C., which means that at present, six accused are facing the trial. The matter did not rest here. After Ranvir Singh (injured) was re-examined, after the summoning of additional accused and two eye witnesses, Ram Niwas and Manoj Kumar were examined, the present application was filed on 6.8.2015, which was dismissed by the learned Additional Sessions Judge, Hisar, vide impugned order dated 14.9.2015. It is against this order that the complainant has come up in the present revision.

It comes out that when the first application was dismissed on 5.10.2013 by the learned Additional Sessions Judge, Hisar, the revision

CRR-3886-2015 (O/M)

-5-

against the same was withdrawn. The learned Additional Sessions Judge, Hisar, while disposing of the said application, passed a speaking order dated 5.10.2013. The learned Additional Sessions Judge, Hisar, took the view that during investigation of the present FIR, it came out that FIR No. 26, dated 9.1.2010, under Sections 398, 401 IPC and Arms Act, registered at Police Station Gurgaon, was under investigation wherein Pawan son of Geenu Ram Saini and Sonu were arrested and during interrogation, they made disclosure statement and admitted their involvement in the crime. From them, iron pipes were recovered. They also identified the place of occurrence. The motorcycle used in the crime was also recovered from them. They have further disclosed to the police that they had caused injuries to Ranvir Singh, Advocate, on the asking of Satbir son of Jai Lal, resident of Gawaliwor (Rajasthan), for which Rs. 65,000/- were paid to them in cash. The said Satbir was also arrested. One accused Ankit involved in the crime was declared a proclaimed offender. It was further discussed that the call details of the accused, challaned by the police, were also attached with the challan, which shows that at the time of occurrence and previous thereto, the said accused had talked with said Satbir and accused Pawan repeatedly talked with Ajit Sehrawat from 28.8.2009 to 5.9.2009. Except accused Ajit Sehrawat, the remaining persons sought to be summoned were not found present on spot at the time of occurrence. The police also found that one Constable Jagtar Singh, stated to be attached as Personal Security Officer of a judicial officer, had also arrived at the place of occurrence immediately after the occurrence. His statement was also recorded. Therefore, application under Section 319 Cr.P.C. was dismissed

CRR-3886-2015 (O/M)

-6-

after discussing the case law on the point and holding that the powers under Section 319 Cr.P.C. are to be used sparingly. The said order has now become final.

Now, the question would arise as to whether after the examination of two eye witnesses, namely, Ram Niwas and Manoj Kumar, on the fresh application filed under Section 319 Cr.P.C., the said respondents are to be summoned ?

The learned senior counsel for the petitioner has relied upon the authority of the Rajasthan High Court in Sobha Ram Versus State of Rajasthan and Kanhaiyalal, 2008 (1) CriLR (Rajasthan) 143, authorities of this Court in Raghuwant Singh Versus State of Punjab and another, (arising out of CRM-M-37845 of 2012) and in Bharpur Singh Versus Balwinder Singh, 2002 (2) RCR (Criminal) 228 and authority of Allahabad High Court in Ashok Singh Versus State of U.P., 2008 (62) ACrC 602, to press that the second application filed under Section 319 Cr.P.C. is not barred and that the principle of *res judicata* is not attracted.

I am of the view that two eye-witnesses, as mentioned above, had made more or less the same statement as made by the injured Ranvir Singh when the previous application was decided on merits. The said eye-witnesses did not introduce a new case. They only supported the statement of the injured Ranvir Singh, which was not found to be trustworthy to summon additional accused under Section 319 Cr.P.C. Infact, under the cover of examination of two eye-witnesses, the complainant wants the review of the previous order dated 5.10.2013, passed by the learned Additional Sessions Judge, Hisar. The statements of the eye-witnesses do

CRR-3886-2015 (O/M)

-7-

not improve the case of injured, but merely support his version.

So far as exercising the powers under Section 319 Cr.P.C. are concerned, in any case, if some evidence comes, which was earlier not there, for example, some scientific evidence is led or the statement of any other witness except the eye-witness is led, which would prove the involvement of the private respondents in the crime, the Court is not powerless to summon the additional accused under Section 319 Cr.P.C.

In the present case, the petitioner first exercised his rights under Section 190 (b) Cr.P.C. and when he failed, he filed a criminal complaint on the basis of same facts, which was dismissed. The revision against the same is stated to be pending before the Court of the learned Additional Sessions Judge, Hisar. Then, after the examination of the injured, an application was filed to summon the present private respondents, which was dismissed by the learned Additional Sessions Judge, Hisar, and the revision (CRR-585-2014), filed before this Court against the same was withdrawn on 21.5.2014. No liberty was given by the Court to re-file the same on same cause of action or after examination of the eye-witnesses. The reasoning given by the learned Additional Sessions Judge, Hisar, while dismissing the first application on 5.10.2013, holds good even after the examination of two eye-witnesses, namely, Ram Niwas and Manoj Kumar. It is common that when the Courts are not inclined to grant the relief, the petitions are withdrawn, stating that it is being withdrawn at this stage. In any case, after the withdrawal of the said revision before this Court, the order dated 5.10.2013 has become final and under the garb of the present application, the same cannot be reviewed.

CRR-3886-2015 (O/M)

Even if the matter is otherwise examined on merits, it comes out that on first three occasions, the lower Court had refused to exercise power under Section 190 (b) Cr.P.C., summoning in the criminal complaint on the basis of same facts and additional accused under Section 319 Cr.P.C. Therefore, the revisional powers are not to be exercised in such cases. It is to be noted that the lower Court, while passing the previous order on 5.10.2013, has referred to the call details, attached with the challan by the police, which indicated that the accused challaned by the police were involved in the crime and all the present private respondents were not involved in the crime. The police had also relied upon some other evidence. While passing the order under 319 Cr.P.C., the learned Additional Sessions Judge, Hisar, was at liberty to consider the evidence of the injured as well as other material evidence brought by the police on file after the investigation. The Courts are not to exercise the powers in mechanical manner and not act merely as post office by blindly believing whatever injured or the eye-witness state and summon any person named by them.

The MLR (Annexure-P-4) shows that the injured Ranvir Singh was brought to hospital by Miss Roopa, daughter of Ram Niwas and not by Ram Niwas himself, on 2.9.2009 at 7:45 AM. The MLR was recorded by doctor at Lifetime Hospital, in which nine injuries were found, all of which are lacerated wounds. This raises doubt about the presence of Ram Niwas at the spot. In the cross examination, the accused have tried to impeach the credit of another witness Manoj Kumar, who is stated to be an advocate, and claims to be present at the spot.

The learned senior counsel for respondents No. 2 and 3 has

CRR-3886-2015 (O/M)

-9-

argued that Om Parkash and Vinay Kumar are also advocates by profession and that the injured Ranvir Singh had several criminal cases pending against him in the courts, in which Om Parkash, Advocate/respondent, is appearing on behalf of other party. Therefore, there was professional rivalry between the parties and the injured wants to settle the scores with the opposite counsel and his son.

The learned senior counsel has further argued that the injured Ranvir Singh is trying to take the benefit of he being an advocate. However, he has got a criminal record. A list has been given to this Court, which shows that as many as 39 FIRs have been registered against said Ranvir Singh, starting from the year 2011. The FIRs have been registered at different police stations i.e. Hansi, Bhiwani, Tosham, Rewari, Kosli, Fatehabad, District Jhunjhnu (Rajasthan), District Alwar (Rajasthan), District Hanumangarh (Rajasthan) and Hisar, relating to various offences of criminal breach of trust, forgery etc. Similarly, a list of about sixteen cases has been produced, in which Ram Niwas Saini is stated to be witness for Ranvir Singh. When the first application was decided on 5.10.2013, the case law on the point was discussed. The legal position regarding principle governing and exercising the powers under Section 319 Cr.P.C. were considered by the Hon'ble Supreme Court of India in Hardeep Singh Versus State of Punjab and others, JT 2014 (1) SC 412.

I am of the view that the powers under Section 319 Cr.P.C. to proceed against any other person, who appears to have committed the offence, are to be exercised very cautiously and sparingly. The Court has to remain on its guard to see that the powers are not misused by the

CRR-3886-2015 (O/M)

-10-

complainant party by naming anybody. For proceeding against accused, who appears to have committed the offence, the Court is not only to see evidence, statement of witnesses, but also has to see the material placed on file by the investigating agency alongwith the challan. In this case, the complainant repeatedly failed to summon the present private respondents, but even then, on one or the other grounds, he kept on filing one or the other applications. This is third application filed under Section 319 Cr.P.C. Earlier, two other attempts, by filing application under Section 190 (b) Cr.P.C. and by filing a criminal complaint, have already failed. In these circumstances, I am of the view that there is no illegality or infirmity in the impugned order. The same is accordingly upheld. Consequently, the present revision is dismissed.

(KULDIP SINGH)  
JUDGE

30.5.2016  
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