

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

CRR No.3889 of 2016 (O&M).

Date of Decision: 03.11.2016.

Sukhjinder Singh

....Petitioner.

VERSUS

State of Punjab and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Manpreet Singh Sidhu, Advocate for the petitioner.

SNEH PRASHAR, J.

CRM-33379-2016

Allowed, as prayed for.

CRR-3889-2016

This revision petition is directed against the order dated 19.08.2016 passed by learned Judicial Magistrate Ist Class, Budhlada, dismissing the application filed by the prosecution-complainant under Section 319 of the Code of Criminal Procedure (for short, "Cr.P.C."), for summoning nine persons (respondents No.2 to 10) as additional accused in First Information Report No.66 dated 26.07.2014 under Sections 447, 511, 148, 149 of the Indian Penal Code (for short, "IPC") and Section 25/27/54/59 of the Arms Act, 1959 registered at Police Station Boha, District Mansa.

The submissions made by Mr. Manpreet Singh Sidhu, learned counsel representing the petitioner have been considered.

From the impugned order, it transpires that in his complaint to

were working in the fields, 17 persons namely, Gurcharan Singh, Surjit Singh, Lakhvir Singh, Gurmel Singh, Davinder Singh, Leela Singh, Jashan Singh, Gurmeet Singh, Inderjit Singh, Jaswinder Singh, Rajinder Singh, Gurpreet Singh, Gora Singh, Raja Singh, Chhinda Singh, Lakhi Singh and Shishpal Singh, armed with deadly weapons had forcibly entered their fields and had tried to take possession of the land and also construct a room thereon. Based on the complaint, First Information Report No.66 dated 26.07.2014 was registered. During investigation into the matter, the police deleted Section 25/27(54) of the Arms Act and challaned only eight persons for commission of offence under Sections 447, 511, 148, 149 IPC. The remaining nine persons (respondents No.2 to 10) named in the First Information Report were found to be innocent and their names were recorded in Column No.2 of the final report presented under Section 173 Cr.P.C.

After the trial began, petitioner-complainant stepped into the witness box and reiterated his allegations as contained in the First Information Report. He again named all the 17 persons as the offenders. On the basis of statement of the petitioner, prosecution filed an application under Section 319 Cr.P.C. for summoning respondents No.2 to 10 as additional accused, but learned Magistrate finding no merit in the application dismissed the same vide the impugned order dated 19.08.2016.

Learned counsel for the petitioner submits that in the very initial complaint made by the petitioner, he had stated that respondents No.2 to 10 armed with deadly weapons like pistols and *Gandas* were present with the other eight accused (since challaned) at the time of occurrence. It is

respondents innocent. The persons whose statements were recorded during enquiry were of different villages and were politically connected to the ruling party. Even the application for declaring respondents No.2 to 10 innocent was given by Jamna Singh, Ex. Sarpanch of village Andiawali, who except for being a political leader had no connection with the controversy in question. In any case, the petitioner had specifically named respondents No.2 to 10 as accused in the First Information Report and had explained the role played by them during his statement in the Court. The Magistrate has the power to summon the persons wrongly dropped by the police during investigation when there is enough material to initiate prosecution against them. To support his argument, learned counsel relied upon *Jogendra Yadav & Ors. vs. State of Bihar & Anr., 2015(3) R.C.R. (Criminal) 935; Dhrup Singh and others vs. State of Bihar, 2013(4) R.C.R. (Criminal) 228; and Lok Ram vs. Nihal Singh, 2006(2) R.C.R. (Criminal) 707.*

There are no two thoughts on the proposition of law that invoking the provisions of Section 319 Cr.P.C., the trial Court has jurisdiction to add a person as an accused at any stage of proceedings if it is convinced that a prima facie case of commission of offence is made out against the said person on the basis of the material available in the final report submitted by the prosecution or the evidence led during trial. However, the discretion with the trial Court under Section 319 Cr.P.C. to summon a person as an additional accused has to be exercised sparingly and with caution and only when the concerned Court is satisfied that some offence has been committed by such person. The power has to be essentially

Section 319 Cr.P.C., the Hon'ble Apex Court in **Michael Machado & Anr. vs. Central Bureau of Investigation & Anr., 2000(2) R.C.R. (Criminal) 75,**

held as under:-

“The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.

But even then, what is conferred on the court is only a discretion as could be discerned from the words the court may proceed against such person. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court

had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons.”

Similarly, it has been held by Hon'ble Apex Court in **Hardeep Singh and another v. State of Punjab and others 2014(1) R.C.R. (Criminal) 623** that the satisfaction for summoning a person under Section 319 Cr.P.C. should be the same as for framing of charge and said satisfaction is to be recorded in case, the Summoning Court is of the opinion that some other persons, who have been sought to be summoned are also involved in commission of offence. Not only prima facie case is to be seen from the evidence led before the trial Court but it is also to be seen as to whether the persons sought to be summoned can be convicted on the basis of said evidence available on record.

Reverting to the instant case, no doubt the petitioner had named respondents No.2 to 10 as accused in the First Information Report lodged by him, but considering all aspects of the case and the material/evidence on record, the findings of learned trial Court are as under:-

“Perusal of the case file reveals that it is a admitted case of complainant and accused side that some civil litigation is pending in the court between the both sides. It has also come to the knowledge of this court during the course of arguments that few other FIR's are also registered pertaining to dispute of land between the parties. It seems complainant has tried to give criminal colour to his personal rivalry with a motive of putting pressure on the opposite party to compromise in civil case. Moreover mere recital while appearing in the witness

box any evidence cannot lead to summon an accused under section 319 Cr.P.C. Perusal of the case file further reveals that the witness named by the complainant are his cousin brother and brother in law. As such, these witnesses can't be relied upon in absence of any corroboratory evidence because these witnesses being near relatives are interested witnesses. It is further alleged that accused named by the complainant tried to build up a room over the land owned by him and his brother but recovery memo Ex. PB prepared by the police stated that only 50 bricks were recovered from the spot. By no stretch of imagination the story put forward by the complainant be believed on this count only that accused persons tried to construct room with the help of 50 bricks only. It has also transpired during the course of arguments that the land in dispute was sold by the father of complainant to one of the accused but the complainant and his brother are in possession of the disputed land. It further reveals from the judicial file that the above named accused persons were kept in column No.2 after thoroughly investigating the matter on the written instructions of Deputy Inspector General of Police, Bathinda. It seems, it is a afterthought story so concocted to implicate other persons as accused with present accused due to ongoing civil dispute between the parties and just to create pressure on the accused facing the trial. Nothing is on record shows the connivance of these persons as named by the complainant in the alleged incident."

In addition to the fact that the present criminal case has arisen out of an ongoing civil dispute between the parties and already few other criminal cases also stand registered pertaining to the dispute of land between them, it is noteworthy that according to the petitioner the persons (respondents No.2 to 10), who were dropped by the police during investigation, were armed with deadly weapons like pistol and *Gandas* etc. However, neither the petitioner nor his brother, who was present with him in the fields, suffered any injury at the hands of the alleged offenders. It was not even his allegation that any of them had tried to inflict an injury on him. Just because the petitioner had named the respondents as accused who during enquiry were found to be innocent, would not be enough to prove that the said persons had committed an offence for which they should be summoned and tried with the accused already facing trial. In ***Kailash vs. State of Rajasthan & Anr., 2008(2) R.C.R. (Criminal) 200*** the Hon'ble Apex Court held as under:-

“A glance at these provisions would suggest that during the trial it has to appear from the evidence that a person not being an accused has committed any offence for which such person could be tried together with the accused who are also being tried. The key words in this Section are "it appears from the evidence".. "any person". "has committed any offence". It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, the discretion under Section 319 Cr.P.C. would be used by the court. This is apart from the fact that such person against whom such discretion is used,

should be a person who could be tried together with the accused against whom the trial is already going on. This Court has, time and again, declared that the discretion under [Section 319 Cr.P.C.](#) has to be exercised very sparingly and with caution and only when the concerned court is satisfied that some offence has been committed by such person. This power has to be essentially exercised only on the basis of the evidence. It could, therefore, be used only after the legal evidence comes on record and from that evidence it appears that the concerned person has committed an offence. The words "it appears" are not to be read lightly. In that the court would have to be circumspect while exercising this power and would have to apply the caution which the language of the Section demands."

The petitioner named 17 persons as accused. No overt act was specifically attributed to any of the respondents either in the First Information Report (Annexure-P1) lodged by the petitioner or during trial when he appeared in the witness box as PW1 and made statement (Annexure-P2).

Thus, there appears no ground for intervention in the order of learned Magistrate and the petition being devoid of merit, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

03.11.2016
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Whether speaking/ reasoned : Yes

Whether Reportable : No