

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

CRR No.4057 of 2016.

Date of Decision: 07.11.2016.

Virender @ Gabbar

....Petitioner.

VERSUS

State of Haryana and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Jangvir S. Hooda, Advocate for the petitioner.

SNEH PRASHAR, J.

This revision petition is directed against the order dated 04.10.2016 passed by learned Additional Sessions Judge-I, Palwal, allowing the application filed by the prosecution-complainant under Section 319 of the Code of Criminal Procedure (for short, "Cr.P.C."), for summoning the petitioner as an additional accused in First Information Report No.629 dated 28.11.2014 under Sections 148, 149, 332, 333, 353, 186, 427, 506 and 307 of the Indian Penal Code (for short, "IPC") registered at Police Station Hodal.

The relevant facts, as garnered from the impugned order, are that on 28.11.2014 ASI Rajbir Singh alongwith his official companions had gone to village Gadhota by means of a govt. vehicle bearing No.HR-27B-2213, where an accident had taken place and in which one person had died.

About 40-50 persons, armed with Lathis, Dandas and Sariyas, were present

at the spot and they attacked the police party with their respective weapons

with an intention to kill them and caused injuries to ASI Rajbir Singh, ASI Vijay Kumar and Constable Wahid Hussain (driver of the govt. vehicle). The vehicle was also damaged by them. ASI Rajbir Singh informed higher police officers about the incident and in his written application specifically named Virender @ Gabbar son of Ravi, Mohan son of Satbir, Lalit son of Mahender, Sandeep son of Hoshiyar Singh, Laxman son of Dharampal, Monu son of Dharampal, Raju son of Rajbir, Sunder son of Karan, Subhash son of Keshav, Hansu son of Raju, Virender son of Amar Singh and Suraj son of Desraj as the persons who alongwith 25-30 persons had attacked on the police party with an intention to kill them.

On the basis of the complaint of ASI Rajbir Singh, a formal First Information Report was recorded and a case was registered. During investigation, Virender @ Gabbar son of Ravi was found innocent and was not challaned while out of other accused named by the complainant some were arrested and against some, who could not be arrested, a proclamation was issued. The accused were charge-sheeted but they pleaded not guilty and claimed trial. The prosecution examined ASI Rajbir Singh being the complainant. During cross-examination of the said witness, an application under Section 319 Cr.P.C. was filed by the prosecution for summoning Virender @ Gabbar (petitioner) as an additional accused. Considering the submissions made by counsel for the parties and finding sufficient ground for summoning the petitioner as an additional accused for facing trial alongwith the accused, who had already been challaned, the application was allowed by learned trial Court.

Feeling aggrieved with the order dated 04.10.2016, the

The submissions made by Mr. Jangvir S. Hooda, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner submitted that a discrete enquiry was conducted by the police into the allegations contained in the written complaint given by complainant ASI Rajbir Singh and it was found that the petitioner was not involved in the occurrence and had been falsely involved with an oblique motive. No specific role was attributed to the petitioner which also proved that he had been falsely named. Submitting that the power under Section 319 Cr.P.C. must be exercised sparingly and not as a matter of course and that the Court should not summon a person as an additional accused by passing an order mechanically on the ground that some evidence exists against that person, learned counsel relied upon **Ram Singh vs. Ram Niwas, 2009(3) R.C.R. (Criminal) 501; Sarabjit Singh vs. State of Punjab, 2009(3) R.C.R. (Criminal) 388; and Krishnappa vs. State of Karnataka, 2004(4) R.C.R. (Criminal) 678.**

As observed by learned Additional Sessions Judge in the impugned order dated 04.10.2016, the instant case was registered on the application given by ASI Rajbir Singh wherein he had specifically named the persons who had caused injuries to him and his official companions. He had specifically named petitioner Virender @ Gabbar son of Ravi as an assailant. Also when he appeared in the witness box, he reiterated that the petitioner had given him kicks and fist blows. It was also observed by learned trial Court that in the final report submitted by the prosecution in the Court, nothing was stated on the basis of which petitioner Virender @ Gabbar had been found to be innocent.

There are no two thoughts on the proposition of law that 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 Court is satisfied that some offence has been committed by such person and that the power has to be essentially exercised only on the basis of the evidence available on record. Laying down the scope of 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**, had 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, in **Hardeep Singh and another v. State of Punjab and others 2014(1) R.C.R. (Criminal) 623**, the Hon'ble Apex Court held as under:-

“What is essential for the purpose of the section is that there should appear some evidence against a person not proceeded against and the stage of the proceedings is irrelevant. Where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well, Section 319 Cr.P.C. acts as an empowering provision enabling the court/Magistrate to initiate proceedings against such other persons. The purpose of Section 319 Cr.P.C. is to do complete justice and to ensure that persons who ought to have been tried as well are also tried. Therefore, there does not appear to be any difficulty in invoking powers of Section 319 Cr.P.C. at the stage of trial in a complaint case when the evidence of the complainant as well as his witnesses is being recorded.

Thus, the application of the provisions of Section 319 Cr.P.C., at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 Cr.P.C. can be exercised only on the basis of the evidence adduced before the court during a trial.”

Reverting to the instant case, when it was a case of violent attack on the police party who had gone to conduct investigation in a case of accident and the injured official in his complaint/statement had specifically named the petitioner as an accused for having caused injuries to him and the other injured but the police had opted not to challan him, the Court exercising its power under Section 319(1) Cr.P.C. and on finding existence

of a prima facie case against him on the basis of the material on record, has rightly summoned the petitioner as an additional accused for facing trial alongwith the other already challaned.

There being no illegality or perversity in the order of learned trial Court and the petition being devoid of merit, is hereby dismissed.

(SNEH PRASHAR)
JUDGE

07.11.2016
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Whether speaking/ reasoned : Yes

Whether Reportable : Yes