

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

**CRR No. 4145 of 2016
DECIDED ON: NOVEMBER 09, 2016**

KHARAITI RAM @ SARABJIT SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Malkiat Singh, Advocate
for the petitioner.

JASPAL SINGH, J

Challenge in this revision petition is to the order dated October 12, 2016 passed by learned Additional Sessions Judge-cum-Special Court, Rupnagar, whereby, an application filed by the petitioner under Section 319 of the Code of Criminal Procedure (for short 'Code') for summoning respondents No.2 to 4 i.e Mohinder Singh, Ajmer Singh and Sandeep Singh as an additional accused; has been dismissed.

The instant case has been registered on the statement of complainant Kharaiti Ram @ Sarabjit Singh, who unfolded that on November 17, 2014 he alongwith Gurinder Singh Numberdar, resident of Village Rattangarh,

Harbhajan Singh, resident of Samrala Road, Khanna went to the office of Naib Tehsildar, Morinda for the registration of sale deed in respect of the plot. The sale deed was to be executed by Jagir Singh in his favour who was the owner of plot in question. At about 3.30 PM, Jagir Singh alongwith his two sons namely Ajmer Singh and Mohinder Singh and grandsons namely Sandeep Singh reached there. It has further been alleged by the complainant that when he asked Jagir Singh to execute the sale deed, Jagir Singh instead of executing the sale deed started hurling abuses and uttered ugly words against his caste and community. He uttered the words to the effect that you Bazigar by sowing the paddy has started to purchase the plot and he will teach him a lesson by holding from his beard. All the afore-said persons insulted him in the Tehsil Complex by uttering the words against his caste. On the basis of afore-said complaint FIR No. 3 dated January 10, 2015, under Sections 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity Act, 1989) (for short 'Act') was put into black and white and the investigation was initiated.

After the completion of investigation and other formalities report under Section 208 of the Code has been presented in the Court of learned Judicial Magistrate. There being, *prima-facie* evidence appearing in the report and the documents annexed with it, accused Jagir Singh was charge sheeted to face trial under Section 310 of the Act. The accused Jagir Singh pleaded not guilty and claimed trial.

Accordingly, prosecution was asked to adduce its evidence to substantiate the charge. After examination of complainant as PW-2 prosecution moved an application under Section 319 of the Code to summon respondents No.2 to 4 as an additional accused to stand trial alongwith Jagir Singh but that

application was dismissed by learned trial Court vide impugned order, which necessitated the filing of instant revision petition.

While assailing the impugned order, it has been argued with vehemence by learned counsel for the petitioner that it suffers from material irregularities and the learned trial Court before passing the same did not consider the testimony of the injured/complainant-Kharaiti Lal in its right perspective. In fact, the complainant has specifically mentioned respondents No.2 to 4 as culprits. A specific role has also been attributed to them in his statement made to the police as well as while appearing in the witness box, during the investigation of this case as PW-2. It has also been specifically stated by the complainant that respondents No.2 to 4 also hurled abuses to him and uttered ugly words against his caste and community. The complainant belongs to Bazigar and a certificate to this effect Ex.PW-2/A was also produced before Court. Since there is a specific role attributed to respondents No.2 to 4 they are also liable to face trial alongwith Jagir Singh under Section 310 of the Act. The impugned order is liable to be set aside in view of the cogent and convincing evidence adduced by the petitioner/complainant before learned trial Court.

After bestowing due consideration to the afore-said submissions made by learned counsel for the petitioner and scrutinizing the impugned order, this Court does not find any merit or factual weight therein.

Before proceedings further to dwell deep in the merits of the instant case, it would be desirable to discuss the scope and jurisdiction of the Court while dealing with an application under Section 319 of the Code

The same was discussed and considered by Hon'ble Apex Court in

the case of **Rajendra Singh vs. State of U.P. (2007) 3 SCC (Criminal) 375**; in which following observation was made:

“The power under Section 319 Cr.P.C. is conferred on the court to ensure that justice is done to the society by bringing to book all those guilty of an offence. One of the aims and purpose of the criminal justice system is to maintain social order. It is necessary in that context to ensure that no one who appears to be guilty escapes a proper trial in relation to that guilt. There is also a duty to render justice to the victim of the offence. It is in recognition of this that Cr.P.C has specifically conferred a power on the Court to proceed against others not arrayed as accused in the circumstances set out by Section 319 Cr.P.C. It is a salutary power enabling the discharge of a Court's obligation to the society to bring to book all those guilty of a crime.

While applying its judicious mind on an application under Section 319 Cr.P.C. the trial Court cannot go into microscopic discussion of the evidence. It is required to see the existence of a strong prima facie case against the alleged accused. At the initial stage of proceedings against the person, the trial Court is not concerned with the issue whether the trial would conclude with a conviction or not. Since the provision of Section 319(4)(a) envisages a fresh trial for the newly added accused, fresh evidence needs to be recorded, the evidence so recorded has to be discussed and analyzed by the trial Court. Thus, the trial Court is not required to meticulously discuss the evidence while exercising the power under Section 319 of the Code”.

Similarly in another case **Guriya @ Tabassum Tauquir vs. State of Bihar; AIR, 2008 SC 95** the Hon'ble Apex Court had an occasion to analyze Section 319 of the Code in which following observation was made:

“Power under Section 319 of the Code can be exercised by the Court suo mottu or on an application by someone including accused already

before it, if it is satisfied that any person other than accused has committed an offence and he is to be tried together with the accused. The power is discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputably, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word “evidence” in Section 319 contemplates evidence of witnesses given in Court. Under sub-section (4)(1)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of sub-section 4(1)(b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned.”

To the similar effect is the observation made by Hon'ble Apex Court in the case of **Y. Saraba Reddy v. Puthur Rami Reddy; 2007 (6) JT (SC) 460.**

Now in the light of afore-said settled principles, it is to be seen whether the impugned order calls for any interference by this Court or it suffers from any infirmity or illegality. From the various principles curled out by Hon'ble Apex Court in the above-referred judgments, it is evident that the powers envisages under Section 319 of the Code should be exercised sparingly and only if there is sufficient evidence against a person. Every person is presumed to be innocent and it is obligatory on the part of learned trial Court to adjudge the innocence or the guilt of that person before proceedings under Section 319 of the Code against the person.

Adverting to the facts of the case in hand, no doubt the complainant is Bazigar by caste and Jagir Singh is already facing the trial under Section 310 of the Act. This court has scrutinized the statement of PW-2/complainant,

which is available on record as Annexure P-1. It does not inspire confidence as far as the role attributed to respondents No.2 to 4 is concerned. No doubt it has been stated by him while appearing in the witness box as PW-2 that respondents No.2 to 4 hurled abuses to him and uttered ugly words against his caste or that they were present at the time of occurrence but there is nothing on record to suggest that as to what kind of defamatory words or language were used by any of them and it also cannot be inferred that all the three accused/respondents simultaneously uttered defamatory words in the same terms. Their names were also not appearing in the complaint lodged with the police by the petitioner/complainant. A deep and thorough inquiry was conducted by higher police officials prior to the presentation of report under Section 173 of the Code against Jagir Singh. During that inquiry, respondents NO.2 to 4 were found innocent.

Here it would also be pertinent to mention that there is no fresh evidence in addition to the evidence already collected by the investigating agency prior to the filing of report under Section 173 of the Code against Jagir Singh. It appears that due to animosity with Jagir Singh, respondents No.2 to 4 are being dragged as accused by the petitioner. A person cannot be allowed to settle his scores by way of dragging the innocent persons alongwith the real culprits. Otherwise also, it is a well settled proposition of law that the investigating agency cannot be set into motion just by examining one or two witnesses for the issuance of summoning process against a person.

Thus, this Court is of the considered view that neither the presence of respondents No.2 to 4 is *prima-facie* established at the place of occurrence nor the role ascribed to them could be *prima-facie* established by the prosecution.

In the the light of what has been discussed above, this Court does not find any merit in the instant petition. As such it stands dismissed.

NOVEMBER 09, 2016
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>