

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

CRR No.4217 of 2016.

Date of Decision: 15.11.2016.

Ashish Kumar

....Petitioner.

VERSUS

State of Punjab

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Saurabh Arora, Advocate for the petitioner.

SNEH PRASHAR, J.

Through the instant revision petition, the order dated 13.09.2016 passed by learned Sessions Judge, Amritsar summoning petitioner-Ashish Kumar as an additional accused under Section 319 of the Code of Criminal Procedure (for short, "Cr.P.C."), has been assailed.

A First Information Report No.5 dated 03.01.2016 under Section 302 read with Section 34 of the Indian Penal Code (for short, "IPC") was registered on the statement of Karan son of Subhash Chander, resident of Gilwali Gate, Amritsar. As per the allegations, on 03.01.2016 exchange of some hot words had taken place between complainant Karan Kumar and his brother Arjun Kumar on one side and Akash son of Kamal Kishore and his brother Ashish on the other side when they were flying kites on the roof top of their respective houses. In the evening at about 6:30

was standing in the street and their father Subhash Chander and paternal uncle Som Nath were standing outside the street in the market, Akash and his brother Ashish came there and exhorted to teach Arjun Kumar a lesson for quarreling with them. Ashish caught Arjun Kumar from his arms and Akash gave a knife blow on the left side of neck of Arjun Kumar. As his brother started bleeding from the neck, Ashish and Akash fled away. Arjun Kumar was taken to the hospital but was declared brought dead.

After investigation, while Akash Kumar was challaned by the police, petitioner Ashish Kumar was found innocent and his name was kept in column No.4 of the final report filed by the prosecution. During trial of the case, complainant Karan Kumar and the other eyewitness Som Nath appeared as PW3 and PW4 respectively. Statements of the doctors were also recorded, after which the prosecution moved an application under Section 319 Cr.P.C. for summoning the petitioner as an additional accused, asserting that he had been specifically named in the First Information Report and during trial as well sufficient evidence has been led to show his active participation in the occurrence. Learned Sessions Judge vide the impugned order dated 13.09.2016 (Annexure-P1) summoned the petitioner as an additional accused for commission of offence under Section 302 IPC.

The submissions made by Mr. Saurabh Arora, learned counsel representing the petitioner have been considered.

At the very outset, learned counsel for the petitioner argued that the date of birth of the petitioner is 16.08.1998 and on the date of alleged occurrence i.e. 03.01.2016, he was 17 years, 4 months and 18 days aged and is thus a juvenile. On an enquiry conducted by learned Judicial Magistrate

11.03.2016 (Annexure-P4). The petitioner was then produced before the Juvenile Justice Board and the police having found the petitioner to be innocent during investigation had filed an application before the Juvenile Justice Board for his discharge. Reinvestigation into the matter also revealed that the petitioner was innocent. However, prosecution filed an application under Section 319 Cr.P.C. before learned Sessions Judge during trial of the case in which Akash Kumar, brother of the petitioner, is facing trial and learned Sessions Judge has summoned the petitioner as an additional accused for facing trial alongwith Akash Kumar.

Learned counsel asserted that when the application for discharge of the petitioner was pending before learned Juvenile Justice Board, he could not have been summoned as an additional accused in the case pending before learned Sessions Judge. Otherwise also, when the petitioner had been declared juvenile by learned Magistrate, he could not be summoned to face trial with the other accused who is a major and is under trial before learned Sessions Judge. To support his arguments, learned counsel relied upon **Raju and others vs. State of Haryana and another, 2004(4) R.C.R. (Criminal) 242; and Pardeep Singh vs. State of Punjab, 2012(6) R.C.R. (Criminal) 2660.**

The reference before the Division Bench of this Court in **Pardeep Singh's** case (supra) was whether the Juvenile Justice Board has the jurisdiction to entertain an application under Section 319 Cr.P.C. for summoning a person as an additional accused who is not a juvenile. The reference was answered in affirmative and it was held that the Juvenile Justice Board had the jurisdiction to entertain the application under Section

summoning the case of said person was to be separated and forwarded to the Court of competent jurisdiction. Similarly, in **Raju and others**' case (supra) where the application under Section 319 Cr.P.C. had been filed to summon additional accused who were juveniles and the question was whether the juveniles could be summoned for being tried alongwith other accused, it was held that there was no doubt in the proposition that Section 319 Cr.P.C. gives powers to the trial Court to proceed against any person appearing to be guilty of offence, however if the person summoned to face trial is found to be juvenile, his case can be segregated from others for the purpose of trial for being sent to Juvenile Justice Board.

The questions raised by learned counsel for the petitioner have an answer in the judgments, he himself is relying upon. Undisputedly, Section 319 Cr.P.C. empowers the Court to summon a person appearing to be guilty of an offence. At the time of summoning, the trial Court is not to see as to whether the person to be proceeded against is a juvenile or not. As observed in the impugned order passed by learned Sessions Judge and is also apparent from the First Information Report that the petitioner was attributed a specific role during the commission of offence. It was stated that he had caught hold of the deceased from his arms when his brother Akash Kumar gave a knife blow into the neck of the deceased. The deposition of the complainant was supported by the eyewitness namely Som Nath examined by the prosecution. As such, there being sufficient material to proceed against the petitioner, he had been rightly summoned as an additional accused by learned Sessions Judge.

As far as trial of the petitioner is concerned, it has already been

by the prosecution under Section 173(8) Cr.P.C. is still pending before Juvenile Justice Board and has not been decided so far. In any case if the petitioner is proved to be a juvenile in conflict with law, his case as per law will be separated and sent to the Juvenile Justice Board for trial.

Thus, this petition being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

15.11.2016
jitender sharma

Whether speaking/ reasoned : Yes

Whether Reportable : Yes