

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revn. No.921 of 2015

Reserved on. April 27, 2016

Date of Decision: May 05, 2016

Jaswinder Singh and anotherPetitioners

Versus

State of HaryanaRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Dr.Naresh Kaushik, Advocate for the petitioners.

Mr.Deepak K.Grewal, Deputy Advocate General,
Haryana.

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TEJINDER SINGH DHINDSA, J.

The instant revision petition is directed against the order dated 3.3.2015 in the light of which an application moved by the Prosecution under Section 319 of the Code of Criminal Procedure has been accepted and the petitioners herein have been summoned to face trial as additional accused under Sections 148, 149, 323, 307, 302, 506 of the Indian Penal Code in FIR No.169 dated 3.9.2014, registered at Police Station Sadar Ambala.

2. Brief facts as emanating from the pleadings are that FIR in question was registered on the complaint of Shyam Lal. Complainant had stated that on 2.9.2014 his nephew Govind had

gone to an alcohol vend situated on the main road and where Jaspal son of Bachan Singh and Vicky son of Balbir Singh were already sitting and consuming alcohol and were fighting amongst themselves. Nephew of the complainant is stated to have intervened and stopped them from fighting and thereafter returned home. Subsequently, during the late evening hours, i.e. at 8.30 p.m. on 2.9.2014, Jaspal Singh son of Bachan Singh, Jagmohan Singh son of Balwant Singh, both armed with knives and Jaswinder Singh son of Bachan Singh, present petitioner No.1, holding a stick in his hand are stated to have come present in front of the house of the complainant and were shouting and hurling abuses. Upon this, the complainant as also his nephew Govind came out in the street and at that point of time, Sukhwinder Singh, Gurmel, Vicky, Bachan (present petitioner No.2) holding sticks in their hands also reached at the spot. At such point of time, even brother of the complainant, namely, Ram Chander and Sant Kumar son of Ram Chander came on the spot. Complainant alleged that Jaspal Singh attacked his brother Ram Chander by giving knife blows in the stomach and thereafter both, Jaspal Singh and Jagmohan, armed with knives attacked Sant Kumar. Sukhwinder Singh is stated to have given a stick blow on the head of Ram Chander as also Sant Kumar. Jaswinder Singh, petitioner No.1, Gurmel and Vicky were attributed fist blows upon the complainant himself as also his son Pankaj and leg blows upon the person of Sant Kumar. In such assault, Ram Chander is stated to have succumbed to his injuries and Sant Kumar having suffered injuries opined to be dangerous to life.

3. Even though the complainant had levelled allegations against seven persons including the present petitioners, but during the course of investigation five persons were nominated as accused i.e. Jaspal Singh, Sukhwinder Singh, Jagmohan, Gurmel and Vicky. The present petitioners were found innocent and their names were kept in column No.2 of the final challan document presented under Section 173 of the Code of Criminal Procedure.

4. The application moved by the prosecution under Section 319 of the Code of Criminal Procedure to summon the present petitioners as additional accused was filed on the basis of statement of Sant Kumar, injured recorded before the trial Court as PW1.

5. The deposition of injured Sant Kumar before the trial Court as PW1 has been placed on record as Annexure P6. Reading of the same would show that PW1 has stated that in the occurrence, petitioner No.1, namely, Jaswinder Singh had caught hold of him while Jagmohan Singh had given a knife blow in the stomach. A role has been assigned to petitioner No.2 also of having held his father, namely, Ram Chander (since deceased) while Jaspal Singh inflicted a knife blow also in the stomach.

6. The impugned order dated 3.3.2015 passed by the Additional Sessions Judge, Ambala summoning the present petitioners to face trial as additional accused has been passed solely on the deposition of the injured Sant Kumar, PW1 as would be discernible from the following extract of the impugned order:

“.....At this stage, perusal of the complaint of the complainant as well as statement made by him in the

court and statements of other witnesses recorded under Section 161 Cr.P.C. clearly show active participation in the occurrence of both these accused where accused Jaswinder was armed with lathi and Bachan Singh was armed with danda and Bachan Singh caught hold of Ram Chander and Jaspal gave him a knife blow and the complainant was also caught hold by Jaswinder Singh and Jaspal Singh gave knife blow in his stomach. These allegations prima facie make out a case for summoning both these accused under Sections 148, 149, 323, 307, 302, 506 IPC alongwith other accused. Let accused Jaswinder Singh son of Bachan Singh and Bachan Singh son of Kartar Singh be accordingly summoned for 18.3.2015."

7. Learned counsel for the parties have been heard at length.

8. Section 319 of the Code of Criminal Procedure reads as under:

"319. Power to proceed against other persons appearing to be guilty of offence -

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such court for the purpose of the inquiry into, or trial of, the offence upon which the inquiry or trial was commenced, which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then -

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of Clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

9. The extent of power with the Court to summon persons other than the accused under Section 319 of the Code of Criminal Procedure to stand trial in a pending case has come up for consideration before the Hon'ble Supreme Court in a number of decisions. In **Lokpal v. Nihal Singh, 2006(2) RCR (Cr.) 707**, it was observed as under:

"...The court, while examining an application under Section 319 of the Code, has also to bear in mind that there is no compelling duty on the court to proceed

against other persons. In a nutshell, for exercise of discretion under Section 319 of the Code all relevant factors, including those noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused.

It was furthermore observed:

“19. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken...”

10. In **Lal Suraj @ Suraj Singh and another v. State of Jharkhand**, 2009(1) RCR (Criminal) 504, it had been held as follows:

“...The principle of strong suspicion may be a criterion at the stage of framing of charge as all the materials brought during investigation were required to be taken

into consideration, but, for the purpose of summoning a person, who did not figure as accused, a different legal principle is required to be applied. A court framing a charge would have before it all the materials on record which were required to be proved by the prosecution. In a case where, however, the court exercises its jurisdiction under Section 319 of the Code, the power has to be exercised on the basis of the fresh evidence brought before the court. There lies a fine but clear distinction.”

11. In **Hardeep Singh v. State of Punjab and others, 2014 (1) RCR (Criminal) 623**, the Hon'ble Supreme Court held that the power under Section 319 of the Code of Criminal Procedure is a discretionary and an extra-ordinary power. The same is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. Such power is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some of the person/s may also be guilty of committing that offence. Only where strong and cogent evidence occurs against the person from the evidence led before the Court that such power should be exercised and not in a casual and cavalier manner. It was also observed that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of cross-examination, it would require much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of

charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 of the Code of Criminal Procedure.

12. Adverting back to the facts of the present case, certain material aspects arise and which may be delineated hereunder:

i) It has gone uncontroverted that in the final challan submitted under Section 173 of the Code of Criminal Procedure, the call record details pertaining to both the petitioners had been obtained and it had been concluded that they were not even present at the spot on the date of occurrence.

ii) As per version of the complainant who was an eye witness of the occurrence which led to the registration of the FIR, Jaswinder Singh, petitioner No.1 was stated to be holding a stick in his hand and has been attributed fist blows upon the complainant himself. Insofar as petitioner No.2 is concerned, he was stated to be holding a stick but that apart, no direct/overt act has been attributed.

The deposition of injured Sant Kumar, PW1 sets up a different and improved version inasmuch as petitioner No.1 is stated to have caught hold of the complainant i.e. Shyam Lal while co-accused Jaspal Singh inflicted a knife blow and petitioner No.2 is stated to have caught hold of Ram Chander (since deceased) while Jaspal Singh inflicted a knife blow.

Under such circumstances, it was imperative to

examine the version of injured Sant Kumar as per statement recorded by the investigating agency under Section 161 of the Code of Criminal Procedure.

13. An order under Section 319 of the Code of Criminal Procedure is not to be passed only because an injured seeks to implicate other persons. Sufficient and cogent reasons are required to be assigned by the Court so as to satisfy the ingredients of the provision. The aspects culled out hereinabove have been overlooked while passing the impugned order. It is clarified that such aspects are only illustrative in nature and cannot be taken to be exhaustive.

14. This Court would have no hesitation in holding that the impugned order dated 3.3.2015 passed by the learned Additional Sessions Judge, Ambala accepting an application under Section 319 of the Code of Criminal Procedure summoning the present petitioners as additional accused has been passed in a routine and mechanical fashion and in dis-regard of the settled position of law in respect of the scope and ambit of the power exercisable under Section 319 of the Code of Criminal Procedure.

15. For the reasons stated above, the revision petition is allowed and the impugned order dated 3.3.2015 is set aside. Matter is remanded back to the trial Court to re-consider the issue in the light of the dictum laid down by the Hon'ble Supreme Court in **Lokpal v. Nihal Singh, 2006(2) RCR (Crl.) 707, Lal Suraj @ Suraj Singh and another v. State of Jharkhand, 2009(1) RCR (Criminal) 504 and Hardeep Singh v. State of Punjab and others, 2014 (1) RCR (Criminal) 623** and as noticed hereinabove. A fresh

order be passed within a period of three months from the date of passing of this order after hearing the parties concerned.

16. It is clarified that the directions contained in the present order to re-consider the matter may not be construed that this Court has, in any manner, expressed any opinion as regards the petitioners herein to be summoned as additional accused. Such aspect is to be dealt with by the trial Court at the stage of passing the order afresh and on merits.

17. Disposed of accordingly.

May 05, 2016
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether to be referred to Reporter? (Yes/No)