

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR No. 445 of 2016 (O&M)

Date of Decision: 29.3.2016

Shishpal

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. R.S. Rai, Sr. Advocate with
Mr. Arun Khatri & Mr. Anurag, Advocates
for the petitioner.

TEJINDER SINGH DHINDSA.J

Order assailed in the instant revision petition is dated 16.7.2015, passed by the learned Additional Sessions Judge, Palwal in terms of which an application under section 319 Cr.P.C filed by the prosecution, has been allowed and the present petitioner has been summoned as an additional accused to face trial in F.I.R No.674 dated 20.12.2014 under sections 148, 149, 302, 325, 506 I.P.C and section 25 of Arms Act, registered at Police Station, Hodal.

Brief facts that may be noticed are that the F.I.R came to be registered on the statement of Anil. Deceased is Sahil brother of the complainant. Occurrence is stated to be of 19.12.2014 when Sahil (since deceased), Sunil and the complainant Anil were proceeding to a Bazar and were way laid by the occupants of one white colored Alto car bearing registration no.HR-30K-9777 as also three assailants on a motorcycle. As per complainant's version Rambir, Nakpal, Yashbir, Kuldeep and Shishpal (present petitioner) had alighted from the car and stated to be armed with iron rods and pistols. In so far as the present petitioner is concerned, he is stated to have fired a shot from a pistol aimed at the complainant but which

did not hit the target. It has further been stated by the complainant that Sahil was assaulted by Rambir, Kuldeep had fired a shot on the stomach of Sahil on account of which he fell down and thereafter Shishpal (present petitioner) had fired on the chest of Sahil. Sahil is stated to have succumbed to the injuries suffered. Motive attributed by the complainant is that one day prior thereto i.e. on 18.12.2014 in the late evening hours a dispute had arisen between Sahil and Kuldeep whereupon certain persons had intervened but it is on account of such dispute that Kuldeep had nursed a grudge.

Investigation having been concluded, petitioner was not nominated as an accused having been found to be innocent. Subsequently, an application having been filed under section 319 Cr.P.C, the same has been allowed in terms of the impugned order.

Learned senior counsel appearing for the petitioner has vehemently argued that the court has erred in passing the impugned order inasmuch as the same has been passed in a routine and mechanical fashion and without keeping in mind the settled principles and parameters with regard to exercise of power under section 319 Cr.P.C. It is contended that the Trial Court can summon a person to face trial as an additional accused even though, not charge sheeted but only on the basis of evidence adduced before it and not on the basis of material available in the charge sheet or the case diary because such material contained in the charge sheet or the case diary does not constitute "evidence" as per expression finding a mention under section 319 Cr.P.C. In support of such contention reliance has been placed upon the judgement of the Hon'ble Apex Court in ***Lok Ram Vs. Nihal Singh, AIR 2006 SC 1892***. It is contended that such view has

thereafter been reiterated by the Hon'ble Apex Court even in ***Hardeep Singh Vs. State of Punjab and others, 2014 (1) R.C.R (Criminal), 623.***

It has been argued that the impugned order has been passed by relying upon the Post Mortem Report of deceased Sahil and which could not have been done as the same was only a part of the charge sheet and can be construed to be evidence only after its contents were proved and exhibited by the concerned doctor.

Learned senior counsel has been heard at length and the pleadings on record have been perused.

There would be no quarrel with the proposition that power under section 319 Cr.P.C can be exercised only on the basis of evidence adduced before the court during a trial. The word “evidence” in section 319 Cr.P.C would mean such evidence as made before the court in relation to statements and as produced before the court in relation to documents. In ***Hardeep Singh's*** case (supra) the Hon'ble Apex Court while examining the scope and ambit of exercise of power under section 319 Cr.P.C had observed as follows:-

79. The word “evidence” therefore has to be understood in its wider sense both at the stage of trial and as discussed earlier, even at the stage of inquiry, as used under Section 319 Cr.P.C. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial.

80. In view of the above discussion made and the conclusion drawn herein above, the answer to the aforesaid question posed is that apart from evidence recorded during

trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 Cr.P.C. The “evidence” is thus, limited to the evidence recorded during trial.”

Adverting back to the facts of the present case the complainant concededly has been examined before the Trial Court as PW-2. In his testimony and statement recorded before the Trial Court and the same having been placed on record at Annexure P-3 (colly) along with the instant petition he has deposed in the following terms in his examination-in-chief:-

“On 19.12.2014 at about 3:30/4:00 PM, I, my cousin Sunil and brother Sahil were going to market and when we reached at the crossing of Dr. Omi, a white coloured Alto car bearing registration No.HR-30-K-9777 and one motor-cycle came and stopped there. Nek Pal, Shishpal, Rambir, Kuldeep, Yashbir emerged from the said car whereas Devinder, Gorav and one more boy came from the motor-cycle whom I can identify. They were armed with iron-rods and pistol like objects. They had come prepared. Rambir proclaimed that Sahil should be killed as he becoming a Chaudhary. Nekpal then inflicted an iron-rod blow on the head of Sahil. When I and Sunil ran to rescue, then Shishpal fired a shot upon me and I had a narrow escape. Rambir, Yashbir, Devinder, Gorav and others gave us slaps, kicks and fist blows. Yashbir, Gorav, Devinder and one more boy caught hold of me and Sunil. Rambir gave a fist blow on the mouth of Sahil. Kuldeep fired a shot from his pistol upon Sahil which hit on his abdomen. Resultantly Sahil fell on the earth, then Shishpal fired a shot which hit Sahil on his chest. On hearing the sound of firing crowd assembled there. All the accused persons ran away leaving their vehicles at the spot. I found a mobile phone of one of the accused, then I rang up

Ravi son of Padam from the said mobile at his number 9992106200 and asked my family members to reach at Kishan Singh Hospital, Hodal. Sahil was taken to Kishan Singh Hospital, Hodal and on examination he was declared dead. Police then came there and I moved an application Ex.P1 to the police which bears my signature. Out of the assailants only two namely Devinder and Kuldeep are present in the court today.”

The deposition and statement recorded of the complainant as PW-2 would certainly fall within the term “evidence” as contemplated under section 319 Cr.P.C. The post mortem report of deceased Sahil has been referred to by the Trial Court only for purposes of corroboration and to support the evidence recorded by the court and which would prima facie disclose the complicity of the present petitioner in the commission of the offence. To such extent, this Court is of the considered view that the Trial Court has exercised its powers well within the parameters laid down for summoning a person as additional accused to face trial under section 319 Cr.P.C.

The submission raised by counsel that there are material contradictions and improvements in the testimony of PW-2 and as such, the same could not have been relied upon to form the basis of passing the impugned order does not require any consideration by this Court in exercise of its revisional jurisdiction. These submissions and contentions would remain open to be raised on behalf of the petitioner before the Trial Court.

For the reasons recorded above, it is held that the impugned order dated 16.7.2015 has been passed on valid and cogent reasoning and does not call for any interference.

Petition is, accordingly, dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

29.3.2016
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