

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

CRR No.4554 of 2016.

Date of Decision: 08.12.2016.

Balbir

....Petitioner.

VERSUS

State of Haryana

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. R.K. Sharma, Advocate for the petitioner.

SNEH PRASHAR, J.

Through the instant revision petition, the order dated 10.11.2016 passed by learned Additional Sessions Judge, Mewat summoning petitioner-Balbir 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.378 dated 06.06.2014 under Section 148, 149, 323, 325, 307 and 506 of the Indian Penal Code (for short, "IPC") was registered on the statement of Chhattar Singh son of Prahlad Singh, resident of village Sangel, Police Station Nuh, District Mewat. As per the allegations, on 05.06.2014 at about 4:00/4:30 p.m., when the complainant alongwith his son Hazari and Sumera, Jeet Singh and Kishan sons of Rajbir was ploughing fields, Balbir (petitioner), Mahipal, Ajit, Mukesh, Ramu and Deepak, having grudge because of a dispute regarding Panchayat land, came there armed with weapons. All of them hurled

Panchayat land released. When the complainant replied that the case is pending in the Court and the decision of the Court will be acceptable to all, Chain Pal gave a lathi blow on his left arm. Balbir (petitioner) gave a farsa blow on his head, Ajit and Mukesh gave legs, slaps and fist blows to his son Rajesh and Deepak gave lathi blow which hit on the right eye of Uday and Mukesh gave a lathi blow on the head of Uday. Sarjit gave lathi blow to Hazari on his left foot and Deepak gave a blow with lathi which hit on the left calf muscle of Kishan. All the assailants gave lathi and danda blows to Kishan. On hearing the noise raised by complainant etc., Guddy, Ram Niwan, Ran Vijay, Uday Singh, Santosh and Sandeep came to their rescue but in the meantime Pawan, Ravi, Raj Karan, Kailash, Birju, Raj Kumar, Satender, Avnish, Joginder, Ravinder, Amit, Ajit son of Ranbir, Mukesh, Manoj and Ajit son of Chain Pal and Pappu also came there armed with lathis and danda. Pappu gave a lathi blow on the head of complainant by which he fell down and became unconscious. All the said persons caused injuries to the family members of the complainant with their respective weapons. Hearing the noise, Babu and Kishan sons of Sher Singh and many other villagers came and rescued them from the clutches of the assailants who while leaving threatened to kill them. Thereafter, the complainant and his family members were taken to Nalhar Medical College for treatment.

After investigation, the petitioner was found innocent and final report exonerating the petitioner was filed by the prosecution. During trial of the case, complainant Chhattar Singh appeared as PW1, Sub Inspector Deep Chand and Ram Niwas appeared as PW2 and PW3 respectively. Thereafter, the prosecution moved an application under Section 319 Cr.P.C.

Avinash, Chainpal, Birju, Kailash, Ravi and Amit as additional accused pleading that they had been specifically named in the First Information Report and during trial sufficient evidence has been led to show their active participation in the occurrence. Learned Additional Sessions Judge vide the impugned order dated 10.11.2016 summoned the petitioner and Chainpal as additional accused.

The submissions made by Mr. R.K. Sharma, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner submits that the order passed by learned trial Court summoning the petitioner as an additional accused suffers from patent illegalities. The prosecution moved an application for summoning the petitioner alongwith Ajit son of Ranbir, Mukesh, Avinash, Chainpal, Birju, Kailash, Ravi and Amit as additional accused. Learned trial Court dismissed the application qua all other persons except the petitioner and one Chainpal, whereas against the petitioner also except for the testimony of the complainant and his witness Ram Niwas PW3, no other material was there before learned trial Court to corroborate the ocular deposition of the said witnesses.

Learned counsel asserts that much stronger evidence than mere probability of his complicity is required before a person can be summoned as an additional accused. In the instant case, the police after detailed enquiry found the petitioner to be innocent and did not challan him as there was nothing to connect him with the alleged occurrence. Also as per the railway ticket dated 05.06.2014 (Annexure-P3) annexed with the present petition, the petitioner was not present at the spot of occurrence on the relevant date

by the complainant made before the police authorities was not enough for summoning the petitioner as an additional accused, learned counsel relied upon *Nachattar Singh vs. State of Punjab and others, 2014(36) R.C.R. (Criminal) 882 and Hardeep Singh vs. State of Punjab and others, 2014(1) R.C.R (Criminal) 623.*

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, judiciously and with caution and only when the Court is satisfied that some offence has been committed by such person. Needless to say 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, a perusal of the First Information Report indicates and it was also discussed by learned Additional Sessions Judge in the impugned order that the complainant had specifically named Balbir Singh and Chainpal among the assailants who were armed with 'farsa' and 'lathi' respectively and had inflicted injuries on him. Specific injuries were attributed to each of them which are corroborated by medical evidence. Against the other persons, who were sought to be summoned as additional accused, there were vague and general allegations and therefore the prayer qua them to summon as additional accused was declined. It is a case of violent attack in which the statement of the complainant duly corroborated by the eyewitness was prima facie sufficient to indicate complicity of the petitioner to summon him as an additional accused to face trial with the other accused. In case the petitioner intends to take a defence of self alibi, he will have to prove the same during the trial. At this stage that cannot be gone into by this Court.

The Court exercising its power under Section 319(1) Cr.P.C. and on finding existence of a prima facie case against the petitioner on the basis of the material on record, has rightly summoned him as an additional accused for facing trial alongwith the other accused, already challaned. No intervention by this Court is called for as there is no illegality or perversity in the order of learned trial Court. The petition being devoid of merit is hereby dismissed.

(SNEH PRASHAR)
JUDGE

08.12.2016
jitender sharma

Whether speaking/ reasoned : Yes

Whether Reportable : Yes