

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revn. No.560 of 2016

Date of Decision: February 11, 2016

Tarif Singh son of Shri Umed SinghPetitioner

Versus

State of Haryana and anotherRespondents

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

Present: Mr.Ravinder Malik, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J.

The instant revision petition is directed against the order dated 18.1.2016 passed by the learned Additional Sessions Judge, Rohtak in terms of which an application moved by the prosecution under Section 319 of the Code of Criminal Procedure for summoning the private respondent herein, namely, Virender son of Sat Narain to face trial as additional accused in case FIR No.312 dated 20.10.2014, under Sections 302, 201, 120-B of the Indian Penal Code, Police Station Urban Estate, Rohtak has been dismissed.

2. It may, briefly, be noticed that the FIR in question was registered on the statement of Tarif Singh relating to an incident that took place on 20.10.2014. Complainant had stated that he was working at PGI, Rohtak and his elder brother Baljit was

serving in Jat College. It is further stated that complainant as also his brother had been illegally dispossessed from their ancestral land by Jaivir son of Ramesh, Sat Narain @ Sattu, his son Surender and Rakesh son of Krishan. There was litigation between the parties and on 21.10.2014, the Tehsildar and SHO were to facilitate the possession of ancestral land back to the complainant and his brother in pursuance to Court orders. On 20.10.2014, elder brother of complainant Baljit was returning back home to Rohtak at 10.00 O'Clock on his motorcycle and when he crossed Satyam Mall, Sonapat road, then two young men came on a motorcycle from behind and opened fire. One bullet is stated to have hit Baljit on the right side of back and second bullet hit on the wrist of the left hand. Complainant stated that he was following his brother Baljit on another motorcycle. Both the young boys were stated to have fled away from the spot. Baljit was got admitted to PGI Rohtak, but succumbed to the fire arm injuries suffered on the same very date i.e. 20.10.2014. Accusation levelled is that there was previous enmity with Jaivir and Sat Narain with regard to illegal possession of ancestral land and, as such, the accused by hatching a conspiracy had got Baljit killed by the two young boys.

3. Learned counsel appearing for the petitioner would submit that immediately thereafter i.e. one day after the occurrence, supplementary statement of complainant Tarif Singh, brother of the deceased, was recorded on 21.10.2014 in which he had specifically named Virender son of Sat Narain (private respondent No.2 herein) to be involved in the conspiracy resulting

in murder of his brother Baljit on 20.10.2014. Learned counsel submits that even deposition of Tarif Singh while being examined before the trial Court as PW1 is on the similar lines wherein again the name of Virender sought to be summoned as additional accused was named as a member of the gang who had hatched the conspiracy. It has been argued that the trial Court has erred in not exercising its powers under Section 319 of the Code of Criminal Procedure to summon the private respondent as additional accused.

4. Learned counsel for the petitioner has been heard at length.

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

"319 [Cr.P.C.](#) -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 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 the 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.”

6. 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 came up for consideration before the Hon'ble Supreme Court of India in **Hardeep Singh v. State of Punjab and others, 2014(1) RCR (Crl.) 623** and it was held as under:

“Power under [Section 319](#) Cr.P.C. is a discretionary and an extra- ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where

strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

Thus, we hold 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 requires 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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under [Section 319 Cr.P.C.](#) In [Section 319 Cr.P.C.](#) the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under [Section 319 Cr.P.C.](#) to form any opinion as to the guilt of the accused."

7. Such view was re-iterated by the Apex Court in **Jogendra Yadav and others v. State of Bihar and another, 2015 (3) RCR (Criminal) 935.**

8. Perusal of the impugned order dated 18.1.2016 passed

by the trial Court would reveal that the prayer for summoning private respondent Virender as additional accused has been declined by noticing that there was a history of civil as well as criminal litigation between the parties and FIR No.464 dated 7.11.2013 under Sections 323, 324, 341, 506 of the Indian Penal Code, Police Station Urban Estate Rohtak and FIR No.168 dated 18.6.2014, under Sections 379, 447, 34 of the Indian Penal Code had been got registered by the complainant party against the accused party including Sat Narain, but in none of these FIRs, the name of Virender son of Sat Narain had been mentioned. Even in the statement recorded at the time of inquest proceedings upon the death of Baljit, statement of PW Sahijeet Singh son of deceased Baljit and PW Khushwat son of Tarif had been recorded under Section 161 of the Code of Criminal Procedure and in which the name of the private respondent did not figure as a conspirator. Prosecution had referred to statement of Ved Vrat recorded under Section 161 of the Code of Criminal Procedure as regards having over-heard the conversation of conspiracy amongst the accused, but even in such statement, the name of Virender i.e. private respondent herein was not mentioned.

9. In the considered view of this Court, the learned Additional Sessions Judge, Rohtak while passing the impugned order, dated 18.1.2016, has declined the application under Section 319 of the Code of Criminal Procedure to summon private respondent as additional accused upon cogent and valid reasons and has rightly applied the test laid down in **Hardeep Singh's** case (supra).

10. No infirmity in the impugned order is found. Revision petition is, accordingly, dismissed.

February 11, 2016

SRM

(TEJINDER SINGH DHINDSA)
JUDGE

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