

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-28150 of 2017

Date of Decision: 10.10.2017

Satto Devi @ Santosh & another

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Sanjay Vashisth, Advocate
for the petitioners.

HARI PAL VERMA, J.

Through the instant petition filed under Section 482 of the Code of Criminal Procedure, 1973, the petitioners namely Satto Devi @ Santosh and Om Wati Devi have impugned the order dated 11.05.2016 (Annexure P-6) passed by learned Judicial Magistrate Ist Class, Faridabad, whereby, on an application under Section 319 CrPC moved by the prosecution, learned Magistrate has summoned the petitioners, as additional accused.

Challenge has also been laid to judgment dated 19.04.2017 (Annexure P-7) passed by learned Additional Sessions

Judge, Faridabad, whereby the revision petition filed by the petitioners against order dated 11.05.2016 was dismissed.

Briefly stated, FIR No.92 dated 25.06.2012 under Sections 148, 149, 323, 325, 506 IPC, P.S. Ballabgarh Sadar, District Faridabad (Annexure P-1) was registered against the petitioners and other co-accused, at the behest of complainant – Manju Devi, who is injured in the case. As per the FIR, on 16.6.2012 at about 8.00-9.00 P.M., when the complainant was at her house, accused Nahar Singh son of Kanhi Ram resident of Deeg started abusing the complainant while coming in front of their house. He went back after saying that he will come back soon. Thereafter, said Nahar Singh along with his three sons namely Vikram Singh, Surat Singh and Lokesh, wife namely Satto Devi and Om Wati wife of Vikram, armed with *dandas*, *lathi* and hockey, started dragging complainant's father-in-law Kashi Ram outside their house and started beating him with *lathi* and *dandas*. On hearing the noise, the complainant and Rewati Devi came there. The accused also gave beatings to the complainant and Rewati Devi also with *lathi*, *dandas* and hockey. On getting this information, husband of the complainant namely Rajender Singh and other persons from the street reached there. On seeing them, the accused ran away from the spot. Rewati Devi and Kashi Ram were brought to hospital for treatment. During this fight, gold tops and gold chain of Rewati Devi were lost. After investigation, the police submitted a report to the effect that fight or dragging from the house is not found to have taken

place. The police, on the basis of statement made by the complainant has found the petitioners innocent and had not submitted challan against them. It is on the basis of application moved by the prosecution under Section 319 CrPC, the petitioners have been summoned, as additional accused, to face trial, vide order dated 11.05.2016 passed by learned Judicial Magistrate Ist Class, Faridabad.

Aggrieved from the order dated 11.05.2016, the petitioners preferred a revision petition, however, the same was dismissed vide order dated 19.04.2017 by learned Additional Sessions Judge, Faridabad and thus, the order dated 11.05.2016 passed by the trial Court was maintained.

Learned counsel for the petitioners has argued that as per Section 319 CrPC, in order to summon an accused, as additional accused, there must be some material before the trial Court that the accused has committed an offence which should be sufficient to convict him, but in the case in hand, the petitioners have been found innocent after a thorough investigation by the police. The allegations against the petitioners are vague and the petitioners being ladies have unnecessarily been dragged into litigation. It has become a tendency to involve ladies in such cases. The order of summoning of the petitioners is contrary to law. He has further submitted that order under Section 319 CrPC should not be passed in a mechanical manner and while summoning an accused, as additional accused, the Court is required to probe into the matter deeply, so that no innocent person

may suffer and are made to face trial. The very fact that the complainant has submitted a written application after talking to her husband should not be ignored lightly. Moreover, the place of occurrence has been changed and there is a complete contradiction between the versions of the complainant in her complaint, which forms the very basis of the FIR and her evidence as PW-1. Repetition of FIR version is not enough to summon a person to face trial, as an additional accused. The evidence on record should be such which may result into conviction.

Learned counsel has relied upon judgments of this Court in the case of **Hukam Chand and another v. State of Haryana & another 2007(3) RCR (Criminal) 141** to contend that evidence of PW-1 Manju Devi is nothing but repetition of the allegations made in the FIR, which aspect has already been looked into by the police during the course of investigation and found the petitioners were found innocent by the police. The petitioners have been summoned merely on the basis of statement of the complainant with no supporting evidence before the trial Court. He submits that once there is no other evidence before the Court, on the basis of which, complicity of the petitioners could be established, the petitioners cannot be summoned. He refers to paragraph 5 of the aforesaid judgment. Reference has also been made to paragraphs 11 and 12 of the judgment passed by Hon'ble the Apex Court in the case of

Michael Machado v. Central Bureau of Investigation 2000(2) RCR

(Criminal) 75, which read as under:-

“11. 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 as tried along with the already arraigned accused.

12. 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 each other persons.”

He has also relied upon judgment of Hon'ble the Apex Court in the case of **Brindaban Das & others v. State of West Bengal 2009(1) RCR (Criminal) 672** to contend that though the accused are named in the FIR but they were not sent for trial by the Investigating Officer, but still the trial Court has summoned them on the basis of the material, which is hearsay evidence and not sufficient to convict the accused and thus, the summoning order is liable to be quashed. There must be some substantial evidence in order to summon a person for trial. While referring to paragraphs no.19 and 20 of the judgment, learned counsel has contended that the fulcrum on which invocation of Section 319 CrPC rests is whether the summoning of persons other than the person named as accused, would make such a difference to the prosecution as would enable it not only to prove its case but also to secure conviction of the persons summoned. Paragraphs 19 and 20 of the judgment of Hon'ble the Apex Court in the case of **Brindaban Das** (*supra*) read as under:-

“19. The fulcrum on which the invocation of Section 319 Cr.P.C. rests is whether the summoning of persons other than the named accused would make such a difference to the prosecution as would enable it not only to prove its case but to also secure the conviction of the persons summoned.

20. In the instant case, on the quality of the evidence adduced by the prosecution as far as the appellants are concerned, it is difficult to hold with any amount of certainty that the same would in all probability secure a conviction against the appellants. The evidence which

seeks to connect the appellants with the commission of the offence are hearsay in nature. Section 319 Cr.P.C. contemplates a situation where the evidence adduced by the prosecution not only implicates a person other than the named accused but is sufficient for the purpose of convicting the person to whom summons is issued. The law in this regard was explained in Ram Kishan Rastogi's case (supra) and as pointed out by Mr. Ghosh, consistently followed thereafter, except for the note of discord struck in Rajender Singh's case (supra). It is only logical that there must be substantive evidence against a person in order to summon him for trial, although, he is not named in the charge-sheet or he has been discharged from the case, which would warrant his prosecution thereafter with a good chance of his conviction.”

He has further referred to judgments of Hon’ble the Apex Court in the cases of **Ram Singh v. Ram Niwas 2009(3) RCR (Criminal) 501** and **Hardeep Singh v. State of Punjab & others 2014(1) RCR (Criminal) 623** to contend that though the Court has power to summon a person, as additional accused, without there being a committal order passed against such person by the committal Court, however, such power under Section 319 CrPC must be exercised very sparingly and not as a matter of course. It is an error to summon a person, as an accused, on the ground that a *prima facie* case is made out against him. While passing the order of summoning, the Court is required to arrive at a satisfaction that the evidence adduced on behalf

of the prosecution, if unrebutted, would lead to conviction of the persons sought to be added as accused in the case.

A further reference has been made to judgment of Hon'ble the Supreme Court in the case of **Brijendra Singh & ors. Vs. State of Rajasthan 2017(3) RCR (Criminal) 374** to contend that though the Court is empowered to summon a person, who is not even arraigned as accused under Section 319 CrPC, but there needs to be some substantial evidence against him, which may lead to conviction if goes unrebutted. This provision has been made to achieve the objective that the real culprit should not get away unpunished.

I have heard learned counsel for the petitioners.

It would be relevant to reproduce Section 319 CrPC, which 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 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.”

A bare perusal of Section 319 Cr.P.C. shows that it allows the Court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, is necessarily not to be an accused already facing trial. He can either be a person named in Column 2 of the chargesheet filed under Section 173 Cr.P.C. or a person whose name has been disclosed before the Court that is to be considered for the purpose of trying the offence. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

As far as the judgments cited by learned counsel for the petitioners are concerned, the same are not applicable in the facts and circumstances of the present case. In the case of **Hardeep Singh v. State of Punjab & others** (*supra*), Hon’ble the Apex Court has held that the provisions of Section 319 CrPC are meant to achieve the objective that the real culprits do not get away unpunished. If the statement of the complainant is scrutinised with her medico-legal report, this Court finds that there is no illegality in the orders passed

CrPC has been used in a comprehensive sense and it includes the evidence collected during investigation. It has been further held in the aforesaid case that it is that material, after cognizance is taken by a Court, that is available to it while making an inquiry into or trying an offence, which the Court can utilize or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court. Therefore, it is a degree of satisfaction which the Court is required to apply while summoning an accused. The test that has to be applied for summoning a person, an additional accused, under Section 319 CrPC, 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.

It is the pleaded case of the petitioners that it is on the basis of evidence adduced by PW-1 Manju Devi, the petitioners have been summoned, as additional accused. In the statement of the complainant PW-1 Manju Devi, it is clearly mentioned that the petitioners along with other co-accused have entered the house of the complainant and started giving beatings. Thereafter, the accused dragged and took Kashi Ram, father-in-law of the complainant, outside and started beating him. There are further allegations that when the complainant along with Rewati Devi came for the rescue of Kashi Ram, the petitioners gave fist and kick blows to them also and in this fight, the gold chain and gold tops of the Rewati Devi were

lost. During this scuffle, the complainant suffered injuries and was admitted in Government Hospital, Ballabgarh and was also treated at B.K. Hospitals. She was medico-legally examined. As per the MLR prepared by the doctor on 16.06.2012, four injuries have been reported on the person of the complainant, which include (i) lacerated wound on the right parietal region with muscle deep with irregular region near occipital region, (ii) swelling on the left clavicle region, (iii) multiple abrasions with reddish colour on the left wrist, joint little view with various sizes; and (iv) complaint of pain superficial bruises on the right middle fore arm and therefore, X-rays of skull, clavicle regions and left forearm were advised by the doctor. In these circumstances, the plea of counsel for the petitioners that there is contradiction in the statement of the complainant cannot be accepted.

Reference may be made to judgment of Hon'ble the Apex Court in **Suman Vs. State of Rajasthan and another, (2010) 1 Supreme Court Cases 250**, wherein it was held as under:-

“A reading of the plain language of Section 319(1) Cr.P.C. makes it clear that a person not already an accused in a case can be proceeded against if in the course of any inquiry into or trial of an offence it appears from the evidence that such person has also committed any offence and deserves to be tried with other accused. There is nothing in the language of Section 319(1) Cr.P.C. from which it can be inferred that a person who is named in the FIR or complaint but against whom charge sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any

offence the court finds that such person has committed any offence for which he could be tried together with the other accused.

The process issued against the appellant under Section 319 Cr.P.C. cannot be quashed only on the ground that even though she was named in the complaint, the police did not file charge-sheet against her. A person who is named in the FIR or complaint with the allegation that he/she has committed any particular crime or offence, but against whom the police does not launch prosecution or files charge-sheet or drops the case, can be proceeded against under Section 319 CrPC if from the evidence collected/produced in the course of any inquiry into or trial of an offence, the court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused. The Magistrate had objectively considered the entire matter and judiciously exercised discretion under Section 319 Cr.P.C. for taking cognizance against the appellant. The issue of summons against the appellant was not an abuse of the process of the court.”

Therefore, considering the fact that PW-1 Manju Devi, who is the author of the FIR, has reiterated her version that the petitioners-accused Satto Devi and Om Wati Devi have caused injuries to her and Rewati Devi with fists and kick blows, which version has been duly supported by the testimony of PW-3 Ramwati, PW-4 Kashi Ram and PW-5 Rajender and further the said version has been well corroborated by medical evidence, this Court finds that there is no illegality in the impugned order/judgments passed by the Courts

below. The plea of the petitioners that they are innocent can only be established during the trial.

Accordingly, the impugned order dated 11.05.2016 passed by learned Judicial Magistrate 1st Class, Faridabad as well as the impugned judgment dated 19.04.2017 passed by learned Additional Sessions Judge, Faridabad are affirmed and the present petition, being devoid of any merit, is dismissed.

It is made clear that observations made hereinabove shall not be construed as an expression on the merits of the case and *lis* in the present case is limited to the extent of decision on the application under Section 319 CrPC. The trial Court shall not be influenced with any observation made above.

October 10, 2017
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No