

CRM-M-29175 of 2017

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

CRM-M-29175 of 2017
Date of Decision: 11.08.2017

Suresh Kumar

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Aditya Sanghi, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this second petition under Section 482 Cr.P.C., prayer has been made for quashing order dated 27.02.2017 (Annexure P-1) passed by learned Additional Sessions Judge, Bhiwani, affirming the order dated 27.04.2016 (Annexure P-2) of learned Judicial Magistrate Ist Class, Charkhi Dadri, Bhiwani, dismissing the application of the petitioner under Section 319 Cr.P.C. in a case arising from FIR No.50 dated 15.03.2014 under Sections 147, 148, 149, 323, 325 and 341 IPC registered at Police Station Baund Kalan, District Bhiwani.

Briefly stated, petitioner got registered the aforesaid FIR against 12 persons on the allegations that around 10:00 p.m. on 14.03.2014, assailants attacked upon him, his brother Nasib, Sandeep and their driver Naveen with their respective weapons like '*gandasi*', rods, '*jaily*', '*lathis*' etc. and caused grievous injuries to them. Motive behind the occurrence was the pendency of a criminal case against the petitioner's side. During

Investigation, out of 12 persons, police found three persons, namely, Pardeep, Monu and Pankaj @ Mauji as innocent and placed them in Column

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No.2 of the final report under Section 173(2) Cr.P.C. Acting upon the final report, the trial Court framed charges under Sections 147, 148, 149, 323, 325 and 341 IPC. The petitioner after deposing, moved an application under Section 319 Cr.P.C. for summoning of aforesaid three persons, namely, Pardeep, Monu and Pankaj @ Mauji as additional accused, which was dismissed by the trial Court vide order dated 27.04.2016 (Annexure P-2) and the same has also been affirmed in revision by order dated 27.02.2017 (Annexure P-1) of the Revisional Court.

It is pertinent to mention here that earlier, similar petition was dismissed as withdrawn by the petitioner on 19.07.2017. Therefore, present second petition with similar averments to take a written order on merits from this Court being not maintainable is liable to be rejected outrightly. However, for the sake of justice, equity and good conscience, it is entertained.

Learned counsel for the petitioner contends that there was sufficient evidence before the investigating officer as well as before the trial Court for summoning aforesaid Pardeep, Monu and Pankaj @ Mauji as additional accused, inasmuch as specific role and injuries were attributed to them by the complainant. Therefore, the trial Court as well as the Revisional Court has erred in dismissing the application of the petitioner under Section 319 Cr.P.C. for summoning the aforesaid persons as additional accused.

I have given anxious consideration to the submissions made by learned counsel for the petitioner.

To deal with the aforesaid contentions of learned counsel for the petitioner, the contents of the FIR lodged by the petitioner and his statement as PW1 before the trial Court are to be looked into. In the FIR, the

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petitioner has got mentioned that Monu gave a *lathi* blow on the back of his son, namely, Prambir, whereas in his statement before the trial Court as PW1, petitioner has attributed *jaily* blow to him. Thus, there is a change of weapon from “*lathi*” to “*jaily*” in the own story of the petitioner.

Police, during investigation, found the aforesaid persons as innocent and thus, placed them in column No.2 of the final report under Section 173 Cr.P.C. No doubt, a person can be summoned as an additional accused under Section 319 Cr.P.C. if there appears some evidence on the record against such person. However, it is well-settled that powers conferred by Section 319 Cr.P.C., being extra-ordinary in nature, have to be used sparingly. Such powers should always be used with utmost care and caution and if compelling reasons exist for proceeding against a person against whom action has not been taken. Merely because some witness has mentioned the name of such person and there is some material against such person, the discretion under Section 319 Cr.P.C. has to be used only to advance the justice, but not as a tool in the hands of the complainant to cause harassment to the person found innocent by the investigating agency during investigation.

Hon'ble Supreme Court in ***Hardeep Singh v. State of Punjab and others***, 2014(1) RCR (Criminal) 623 (SC) has held as under: -

“98. 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.

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99. 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."

To summarise, a person can be summoned only when a strong and cogent evidence has appeared against him before the Court showing a *prima facie* case at the time of framing of charge.

As discussed above, nine accused are already facing trial, who, as per the observation of the impugned order, belong to one and the same family. Though the aforesaid three persons were found innocent during investigation, but petitioner Suresh Kumar has again disclosed their names appearing as PW1 before the trial Court.

It is pertinent to mention here that no new fact could be brought by the petitioner or the prosecution from which the trial Court could prima facie satisfy that the aforesaid three persons, namely, Pankaj, Pradeep and Monu were liable to be summoned as additional accused on the basis of evidence brought by the petitioner before the Court beyond the evidence

already available before the investigating officer prior to filing of the report

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under Section 173 Cr.P.C. and after analysing and rejecting the same, the investigating officer declared the aforesaid persons as innocent. Since no further evidence, during trial, could be brought on the record to make the Court agree to summon the aforesaid three persons as additional accused, therefore, this Court finds no illegality or perversity in the concurrent findings of both the Courts below in dismissing the application of the petitioner under Section 319 Cr.P.C., inasmuch as when there is contradiction in the statement of the petitioner in the FIR and while appearing as PW1 before the trial Court qua the weapon i.e. from *lathi* to *jaily* with regard to the role attributed to Monu.

Consequently, order dated 27.04.2016 (Annexure P-2) of learned Judicial Magistrate Ist Class, Charkhi Dadri, Bhiwani and order dated 27.02.2017 (Annexure P-1) of learned Additional Sessions Judge, Bhiwani, are affirmed.

The petition is dismissed accordingly.

August 11, 2017
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No