

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM No. M-4640 of 2014 (O&M)
Judgement reserved on 16.1.2017.
Date of Decision: 07.02.2017

Aruna Rani

--Petitioner

Versus

State of Punjab and others

--Respondents

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

Present:- Mr. Satbir Rathore, Advocate for the petitioner.

Mr. Ankur Jain, A.A.G., Punjab.

Mr. R.S. Randhawa, Advocate for
respondents no.2 to 4.

TEJINDER SINGH DHINDSA.J

Vide order dated 30.07.2012, passed by the JMIC, Dasuya an application preferred under Section 319 Cr.P.C moved by the prosecution was allowed and the private respondents herein namely Uttam Kumar, Lalit Kumar both sons of Subhash Chander and Munish Kumar son of Baldev Raj were summoned to face trial as additional accused under Sections 448, 511, 34 I.P.C. A revision petition having been filed, the same has been accepted in the light of order dated 28.11.2013, passed by the learned Additional Sessions Judge, Hoshiarpur and accordingly the order dated 30.07.2012, passed by the Trial Court, has been set aside.

The instant petition has been filed under Section 482 Cr.P.C seeking quashing of the order dated 28.11.2013 (Annexure P-5) passed by the learned Additional Sessions Judge, Hoshiarpur. Prayer is for the order dated 30.07.2012 (Annexure P-4) passed by the Trial Court to be upheld and consequentially private respondents no.2 to 4 herein to face trial as

additional accused.

Brief facts that would require notice are that a complaint was lodged by Aruna Rani, petitioner herein widow of Ashok Kumar asserting that her husband had died in the year 1995. Thereafter her father-in-law had effected a family partition in which Subhash Chander, elder brother of her husband was given the entire residential house, other brother-in-law namely Baldev Raj was given Rs.50,000/- in cash and a shop was given to Hemant Kumar i.e. minor son of the complainant. A Will recognizing such family partition was also stated to have been executed. Complainant asserted that earlier the shop had been given out on rent but thereafter she was herself running a sewing and stitching training centre in the shop. Precise allegations are that on 27.11.2009 at about 3 PM when she was working in the shop at that time Subhash Chander along with his two sons namely Uttam Kumar and Lalit Kumar as also Munish Kumar son of Baldev Raj along with certain unidentified persons had made a forcible entry in the shop and tried to take possession of the shop by pushing the complainant and throwing certain articles outside. Upon a phone call having been made to the police the accused are stated to have gone away. Respectables of the locality intervened and tried to effect a compromise. However, Baldev Raj, brother-in-law of the complainant visited the house of the complainant and threatened her and thereby negated the efforts of any settlement to be arrived at. Against such backdrop F.I.R No. 231 dated 12.12.2009 under Sections 452, 448, 511, 506, 148, 149 I.P.C was registered.

After completion of investigation the challan was filed and in which Subhash Chander and Baldev Raj were nominated as accused and the private respondents herein were found to be innocent. As noticed herein

above, the application filed by the prosecution under Section 319 Cr.P.C to summon the private respondents herein as additional accused was allowed by the Trial Court but in a revision petition preferred such order has been set aside vide impugned order dated 28.11.2013, passed by the learned Additional Sessions Judge, Hoshiarpur (Annexure P-5).

Learned counsel appearing for the petitioner would vehemently argue that the Revisional Court has erred in allowing the revision petition and thereby dismissing the application under Section 319 Cr.P.C. It is contended that the names of the private respondents herein had been specifically mentioned in the complaint which led to the registration of the F.I.R and such version was reiterated by the complainant in her statement before the Trial Court. It is submitted that the private respondents herein are sons of Subhash Chander and Baldev Raj, who in turn were the brothers-in-law of the deceased husband of the complainant and as such, there was a common intention and motive to take forcible possession of the shop. Once participation in the occurrence had been shown, the victim is entitled in law to have the assailants/private respondents herein prosecuted and punished in accordance with law.

Per contra, counsel appearing for the private respondents would contend that the impugned order has been passed in accordance with the well settled principles governing exercise of power under Section 319 Cr.P.C and as such, would not call for any interference.

Counsel for the parties have been heard and pleadings on record have been perused.

Section 319 Cr.P.C 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.”

The extent of power with the court to summon persons other than the accused under Section 319 Cr.P.C to stand trial in a pending case came up for consideration before the Hon'ble Supreme Court in **Lal Suraj @ Suraj Singh and another Vs. State of Jharkhand, 2009 (1) R.C.R (Criminal), 504** and it was held as follows:-

“The principles of strong suspicion may be a criteria at the stage of framing of charge as all the materials brought during the investigation were required to be taken into consideration, but, for the purpose of summoning a person, who did not figure as accused, a different legal principle is required to be applied. A court framing a charge would have before it all the materials on record which were required to be

proved by the prosecution. In a case where, however, the court exercises its jurisdiction under Section 319 of the code, the power has to be exercised on the basis of the fresh evidence brought before the court. There lies a fine but clear distinction.”

In a recent judgment rendered by the Hon'ble Apex Court in **Hardeep Singh Vs. State of Punjab and others, 2014 (1) R.C.R (Criminal), 623**, it was observed that although only prima facie case is to be established from the evidence led before the court while exercising power under Section 319 Cr.P.C to summon additional accused but it would require much stronger evidence than mere probability of such persons complicity in the offence. The test that has to be applied is one which is more than prima facie case as exercised at the stage of framing of charge but short of satisfaction to an extent that the evidence if gone un rebutted would lead to conviction. In the absence of such satisfaction, the court would refrain from exercising power under Section 319 Cr.P.C.

Adverting back to the facts of the present case it would be noticed that after submission of the final investigation report and in which the private respondents herein had been found to be innocent, it is only the complainant's statement recorded before the Trial Court wherein she reiterated her initial version and that apart no fresh evidence has been brought before the Trial Court. The Trial Court while allowing the application under Section 319 Cr.P.C had furnished the following reasoning:-

“9. A perusal of the statement of complainant recorded by the police and statement made by the complainant in the court reveals the facts that Subhash Chander, Uttam kumar, Lalit Kumar and Manish Kumar entered the shop of complainant and gave her pushes and started throwing articles lying in the shop and they also tried to take forcible possession

of the shop under the occupation of complainant Aruna Rani. There is specific allegations against Uttam Kumar, Lalit Kumar and Manish Kumar and their names find mentioned in the statement of complainant. No reason or explanation has been given by the police in the report under Section 173 Cr.P.C. for keeping the names of aforesaid persons in column No.2 of the report nor any document has been place on record showing the innocence of aforesaid persons. There are sufficient grounds and material evidence on record against Uttam Kumar, Lalit Kumar and Manish Kumar.

The reasoning afore-noticed will have to be termed as perverse.

The final challan under Section 173 Cr.P.C has been place on record at Annexure P-6 and where from it clearly emerges that on an application having been moved by Subhash Chander as regards a false case having been registered, an inquiry was marked to S.H.O, Police Station Tanda by the S.S.P. It is during the course of such inquiry that the private respondents herein were found innocent. The inquiry report was thereafter approved by the Dy.S.P as also by the S.S.P vide order dated 05.05.2010.

The power under Section 319 Cr.P.C cannot be exercised in a casual and cavalier manner. The initial version of the complainant which led to the registration of the F.I.R has been found to be false in so far as the private respondents herein are concerned. Before the Trial Court no fresh evidence has come forth to show the complicity of the private respondents in so far as the alleged offence is concerned. The complainant has merely reiterated her version at the stage of deposition before the Trial Court. Concededly, two brothers-in-law of the complainant i.e. brothers of her deceased husband have already been nominated as accused and are facing trial. The present proceedings would be seen by this Court as an attempt to rope in all the family members.

In the totality of the circumstance, this Court is of the considered view the the Revisional Court while passing the impugned order dated 28.11.2013 (Annexure P-5) and thereby dismissing the application under Section 319 Cr.P.C to summon the private respondents herein as additional accused, has rightly applied the test laid down in ***Hardeep Singh's*** case (supra).

No infirmity in the impugned order is found.

Accordingly, the present petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

07.02.2017

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Whether speaking/reasoned: Yes
Whether Reportable: Yes