

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 1178 of 2015 (O&M)

Date of Decision: 24.05.2017

Sombir and others

...Petitioners

VERSUS

State of Haryana and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Gautam Dutt, Advocate
for the petitioners.

Mr. Tanuj Sharma, AAG, Haryana.

SURINDER GUPTA, J.

This is revision petition against order dated 15.11.2014 passed by Additional Sessions Judge, Rohtak whereby application filed by the prosecution under Section 319 Cr.P.C. to summon petitioners as additional accused to face trial for offence punishable under Sections 148, 323, 324, 325, 341, 302 read with Section 149 and 506 of Indian Penal Code (for short 'IPC'), was allowed.

2. FIR No. 180 dated 06.08.2013 was registered on the statement of Wazir son of Ram Kumar wherein he stated that about 10 to 15 days ago a verbal altercation took place between children of his family and family of Kuldeep. On 06.08.2013, he alongwith his brother Rambir was going to his fields for removing grass from paddy crop and when they reached at Chandiwala Dabra turning accused (i) Ramesh son of Prem (ii) Rajal son of Kartar (iii) Bhola son of Raj Singh (iv) Kuldeep son of Shamsheer (v) Ashok son of Rajbir (vi) Karsha son of Raju (vii) Ravi son of Baljit (viii) Sombir son of Rambir (ix) Neela son of Jora (x) Ashok son of Raju and (xi) Kuku

son of Ramphal were standing there with arms. They stopped the complainant. Ramesh, who was armed with licenced pistol, caught the complainant and Bhola gave a knife blow on his mouth. Ashok gave a *jally* blow to Rambir. Yashpal son of Bani Singh and Mahabir son of Bhim Singh came to the spot. Kuldeep Singh gave *farsa* blow on the head of Yashpal Singh while accused-Prem Singh gave a *farsa* blow on the head of Mahabir. Other accused gave *lathi* blows to them. In the meanwhile, Ram Kumar son of Hoshiara and Brij Bhan son of Lal Chand also came to the spot. Rajal gave a *jally* blow to Brij Bhan and Kuldeep gave a *farsa* blow while other gave fist and kick blows to Ram Kumar. Partap was given a *farsa* blow by Sombir and Neela gave a *jally* blow. Ashok and Kuku gave *dang* blows to complainant party. Above accused were accompanied by 7-8 more persons. On hearing the noise of quarrel, Prem and Balwan also came to the spot and got the complainant and others released from the accused, who left the spot with their weapons. While going, Ramesh gave a threat that on that day they had been saved but will be killed on some other day. Yashpal died because of injuries suffered by him and offence under Section 302 IPC was added in this case.

3. After completion of investigation, the challan was presented against nine accused, namely, (i) Ashok son of Rajbir @ Raju (ii) Rajal @ Rajesh son of Kartar Singh (iii) Krishan @ Krisha son of Rajbir (iv) Sunil @ Leela son of Jora (v) Kuldeep son of Shamsher (vi) Prem son of Kartar Singh (vii) Kaptan @ Kuku son of Ramphal (viii) Ramesh Kumar son of Kartar Singh and (ix) Pardeep Kumar @ Bhola son of Raj Singh. Sombir and other 8 accused, whose names find mentioned in the challan, who all are petitioner except Shamsher son of Ami Ram, were kept in column no. 2

and it was found during investigation that they were innocent. Petitioner no. 1-Sombir son of Rambir was on duty in the Army in West Bengal on the date of occurrence. In final report, it was observed regarding petitioners as follows:-

“...During verification of investigation, accused Sombir son of Rambir, caste Jat, named in the first information report, who is in service in the Army, was verified to be present on duty in his unit, on the day of occurrence on 06.08.2013 and statements of the witnesses were recorded. Naresh son of Jabra was verified to be under treatment at Rohtak hospital and also his brother named Balraj son of Jabra and Shamsher Singh son of Ami Singh was verified to be with his son, and his son Rajesh son of Shamsher was present on duty in IDC Area, Rohtak factory, and Sanjay son of Jora, Sintu son of Rambir were verified to be not present at the place of occurrence at the time of occurrence, and named Satyanarain son of Bharthu, being heart patient, was verified to be under treatment on the day and time of occurrence at PGIMS Rohtak and Dimple son of Satyanarain was verified to be attending him at PGIMS. The aforesaid named persons mentioned in column no. 2 were not arrested as no evidence has not come on record for their arrest and were found innocent.....”

4. A complaint no. 67 of 2014 was also filed regarding the occurrence that took place on 06.08.2013, wherein accused, namely, (i) Prem Singh son of Bhim Singh (ii) Kuku @ Harpal son of Bani Singh (iii) Mahabir son of Bhim Singh (iv) Rambir son of Ram Kumar (v) Wazir son

of Ram Kumar (vi) Partap son of Nathuram (vii) Brij Bhan son of Lal Chand and (viii) Ram Kumar son of Hoshiyar Singh, were ordered to be summoned for offence punishable under Sections 148, 149, 323, 325, 326 and 307 IPC. The facts leading to that occurrence have been briefly recorded by learned Sub Divisional Judicial Magistrate, Meham in summoning order dated 25.09.2014, copy of which has been placed on file as Annexure P-7, which reads as follows:-

“.....The brief facts of the case is that on 28.07.2013, at about 6.00 p.m., the family of the complainant and accused had quarreled and the matter was compromised but the accused took grudge and on 06.08.2013 at about 07.30 a.m., all the accused came when the complainant was going in his field and attacked on him. In order to kill him they attacked with knife, iron rod, sticks and gandasi. The accused Prem Singh attacked with a knife on Krishan and accused Harpal attacked on Ashok with his iron rod and when they tried to hit the complainant on his head he raised his arm and the rod hit on his fingers of right hand. Rambir also attacked on him with gandasi and during this his thumb was cut down. After hearing the loud noises all the people gathered and the accused ran away from the spot. Complaint was made to S.P., Rohtak, I.G., Rohtak Range, Rohtak and D.G.P., Haryana but no action was taken and a false case has been framed against him. Hence, he filed the present complaint.”

5. Admittedly, none of the accused except Sombir has been named in the FIR, which incorporates names of 12 persons as accused. On

verification, Sombir, who is an Army personnel, was found present on duty in his unit and this fact has not been contested even by learned State counsel.

6. Learned trial Court while passing impugned order observed that complainant-Wazir, while appearing as PW-1, has named petitioners and deposed about the role attributed to them. It also observed that in the FIR it is mentioned that Sombir and 7-8 other persons had accompanied the assailants. Learned trial Court, while summoning Sombir to face trial, observed that it is a matter of evidence as to whether Sombir was present on the spot on the date of commission of offence or he was on duty at West Bengal. While making this observation, learned trial Court has ignored the observation of investigating officer that he had verified this fact from the Unit of Sombir that he was present on his duty at West Bengal. Petitioners could not be summoned with the observation that complainant, while giving names of all the assailants and attributing specific role to them, has stated that 7-8 other persons were also accompanying them. Petitioners are not the persons unknown to complainant. Sombir son of Rambir was named in the FIR while petitioner no. 4-Sintu is also son of Rambir. Neela son of Jora has also been named in the FIR while petitioner no. 3-Sanjay is also son of Jora. All the petitioners are residents of the village of complainant, as such, he could not have such an excuse that they were not known to him or he could not identify them. He had introduced names of petitioners for the first time when he appeared to depose as PW-1. In this case there were seven injured persons having 13 injuries for which complainant had already named 12 persons. It appears that complainant under the garb of mentioning 7-8 persons, who accompanied the assailants at the time of occurrence, had tired

to implicate petitioners. Learned trial Court should not have mechanically summoned all these persons to face trial or overlooked that in case these petitioners had played any role in the occurrence, their names must have been mentioned in the FIR itself.

7. The trial Court should have taken note of the fact that it is a common tendency among victim party to implicate as many persons of accused party as possible and this is what appears to have been done in this case. When complainant could name 11 persons attributing them distinct role in the occurrence he could also name petitioners, who are co-villagers. Learned trial Court had overlooked the investigation conducted by the police that Sombir was present on his duty in West Bengal. In the absence of any evidence on record that Sombir was present in village on the day of occurrence, the mere saying of complainant that he (Sombir) could prove his plea of *alibi* in defence will put Sombir to unnecessarily harassment of facing trial.

8. In view of above facts, I find that the test applied by learned trial Court fails the test of cogent and convincing evidence or more than *prima facie* case against the petitioner so as to exercise power under Section 319 Cr.P.C. to summon them to face trial as additional accused. In case of **Hardeep Singh Vs. State of Punjab 2014(1) RCR (Criminal) 623**, Hon'ble Supreme Court while dealing with nature of evidence required while exercising power under Section 319 Cr.P.C. to summon a person as additional accused has observed in para Nos. 98 and 99 as follows:-

“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.

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.....”*

9. As a sequel of my above discussion, this revision petition has merit and the same is accepted. Order 15.11.2014 passed by learned Additional Sessions Judge, Rohtak summoning petitioners to face trial as additional accused is set aside.

May 24, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No