

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

**CRR No.2708 of 2014 (O&M)
Decided on: 12.09.2017**

Harpreet Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Nakul Sharma, Advocate
for the petitioner.

Mr. K.S. Sidhu, DAG, Punjab.

Mr. R.P. Daaria, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J. (Oral)

CRM No.26998 of 2014

Heard.

Allowed as prayed for.

Annexures P1 to P7 are taken on record subject to just
exceptions.

CRM No.25739 of 2017

Heard.

Allowed as prayed for.

Annexure P8 is taken on record subject to just exceptions.

CRR no.2708 of 2014 (O&M)

Prayer in this petition is for setting-aside the order dated
12.06.2014 passed by the trial Court vide which the petitioner was
summoned as an additional accused, while allowing the application

under Section 319 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') filed by the prosecution and the petitioner was ordered to face trial in FIR No.209 dated 16.11.2011 registered under Sections 307, 506 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC') and 25/27 of the Arms Act.

It is submitted on behalf of the petitioner that on the statement of respondent No.2, the aforesaid FIR was registered against the petitioner and his co-accused namely Ajit Singh @ Foji and Sahib Singh. After the investigation of the case was completed the petitioner was found innocent by the police and was kept in Column No.2 and challan was presented against the aforesaid co-accused i.e. Ajit Singh @ Foji and Sahib Singh. Thereafter, charges were framed against the aforesaid co-accused and after recording the statement of PW1 – Gurbhej Singh, complainant an application was filed by the prosecution under Section 319 Cr.P.C. for summoning the petitioner as an additional accused. The trial Court vide impugned order dated 12.06.2014 allowed the application and summoned the petitioner – Harpreet Singh as an additional accused to face trial.

While issuing notice of motion, the following order was passed by this Court on 02.09.2017:-

“Petitioner is son of Ajit Singh and brother of Sahib Singh who are already facing trial on the allegation that Ajit Singh had fired two shots at the complainant Gurbhej Singh. Petitioner has been summoned as an additional accused on the basis of the statement of the complainant attributing role to the petitioner that it was petitioner who had gone to the house to fetch the licensed gun of Ajit Singh and fired at the complainant.

*It appears that the inquiry had been conducted vide annexures P-2 and P-3 regarding the role of petitioner. A perusal of the impugned order indicates that the trial Court has casually exercised the discretion under Section 319 Cr.P.C. ignoring the parameters laid down in **Micheal Machado Vs. CBI and others**, 2000 (2) RCR (CrL.) 75 (SC), inter-alia providing that the discretionary power should be exercised only to achieve criminal justice and that the Court should not turn against another person whenever it comes across evidence connecting that other person also with the offence. Neither the statement of the complainant nor the other parameters have been taken into consideration.*

Prima facie, it appears to be a case where the complainant is over-zealous to rope in all the family members of Ajit Singh on account of earlier admitted enmity on account of a boundary dispute between the complainant and the main accused Ajit Singh.

*Counsel relies upon **Krishnappa Vs. State of Karnataka**, 2004 (4) RCR (CrL.) 678 in support of his contention that the Court should not summon a person as additional accused and pass an order mechanically merely on the ground that some evidence has come on record implicating the person. The degree of satisfaction required to be achieved as per decision in **Hardeep Singh Vs. State of Punjab**, 2014 (1) Recent Apex Judgments 384 that there is likelihood of conviction seems to have not been noted in the impugned order.*

Notice of motion to Advocate General, Punjab, for November 28, 2014.

Meanwhile, proceeding against the main accused may continue subject to the final decision of this case, however, operation of the impugned order qua petitioner will remain stayed.”

Thereafter, during the pendency of the present petition the co-accused of the petitioner faced the full length trial and the trial Court vide its judgment dated 27.10.2016 has acquitted the aforesaid co-accused i.e. Ajit Singh and Sahib Singh. While passing the judgment of acquittal, the trial Court has made the following observations with regard to the prosecution evidence:-

“20. The main allegation of the prosecution story are that on 15.11.2011 both the accused Ajit Singh and Sahib Singh in furtherance of their common intention fired shots from the gun with intention to kill them and they also committed the offence of criminal intimidation, but, careful perusal of the testimonies of all the witnesses, the prosecution has failed to prove the said intention to kill the complainant party on the part of the accused. First of all this is not injury case. As per prosecution version, dispute arose between the parties on the land dispute. PW1 – Gurbhej Singh has deposed that Ajit Singh Fauji was cultivating their field and was trying to cut the ridge for about 9 karams which dispute was settled by the panchayat in favour of the complainant party and when on 15.11.2011 Kashmir Singh (complainant side) was rebuilding the said watt, then Jeet Singh, Harpreet Singh and Sahib Singh objected the same. Further, the prosecution allegations are that Jeet Singh raised lalkara and asked her son Harpreet Singh to bring 12 bore gun from his house upon which Harpreet Singh brought the said gun, whereas Harpreet Singh fired a shot with intention to kill Gurbhej Singh and Kashmir Singh, but the police has not carried any investigation as to how the said gun shot escaped both these persons Gurbhej Singh and Kashmir Singh and where exactly that shot struck. Further, the prosecution story is that Harpreet Singh again fired

*shot with intention to kill them. It is highly improbably that two persons fired shot specifically pointing towards Gurbhej Singh and Kashmir Singh, both of them missed the target and even they did not hit any where else. Admittedly, a property dispute was pending between the parties and the present allegations regarding firing of the shots by the accused party towards complainant party seems to be exaggerated one. This fact further finds corroborated from the fact that there is an inordinate and unexplained delay in lodging the FIR. As per prosecution version the took place on 15.11.2011, whereas FIR was lodged only on 16.11.2011 and there is no explanation for this in an ordinate delay. There is another aspect of the matter that no pellets have been recovered and no explanation regarding non-recovery of the pellets from the spot has been given by the prosecution. This all leads no doubt in the mind of the Court that the prosecution has failed to prove that accused fired shots at the complainant party much less with intention to kill them. It is well settled law that were the delay in lodging the FIR has been remained unexplained, then the accused are entitled to benefit of doubt. In this regard, learned defence counsel has relied upon the citation **2006(2) RCR (Criminal) 243 titled as Rakesh Kumar versus State of Haryana**. The facts of this authority are fully applicable in the present case. I also agree with the contention of learned defence counsel that non-joining of independent witness in the present case, which is also fatal to the present case. It is well settled law that non-joining of independent witness in itself may not be fatal to the prosecution case, but in the facts and circumstances of the present case there is no injury to the complainant side and that even not pellets have been recovered, then the non joining of independent witness assume significance. As per the prosecution story*

several persons had gathered at the spot, but none of them has been examined by the prosecution, when the prosecution story itself runs like that so many persons were gathered at the spot, then it was incumbent upon the prosecution to have examined at least one or more persons who have gathered at the spot, which the prosecution has failed to examine any witness. Thus, the accused are held entitled to the benefit of doubt. Moreover, learned defence counsel has relied upon the citation 2008(6) Recent Apex Judgments titled as State of Maharashtra versus Ahmed Shaikh Babajan and others. The facts of this authority are also applicable in the present case.

21. *There is still another aspect of the matter, the police authorities have failed to get the pistol/revolver/gun from any ballistic expert to establish that any shot was fired from the said weapon, then the accused is certainly had entitled for benefit of doubt. In this regard, I draw my inference to the authority of Hon'ble Punjab and Haryana High Court 2006(3) Recent Criminal Reports (Criminal) 209 (P&H) titled as Surjit Singh and another vs State of Punjab, wherein it has been held that where the prosecution has failed to get the ballistic report to ascertain that whether any gun shot was fired from the weapon or not then the accused is entitled to the benefit for doubt.*

22. *Another contention raised by learned defence counsel is that once the investigation starts then the FIR is hit by Section 162 Cr.P.C. There seems to be force in the arguments raised by learned defence counsel. Although PW1 Gurbhej Singh has tried to support the prosecution story in his examination-in-chief, but in his cross-examination he has stated that he had informed the police on 15.11.2011 that the day of occurrence itself, but the police did not record his statement on 15.11.2011, but*

recorded the statement only on 16.11.2011. There is no explanation by the police authorities as to why the prosecution has failed to record the statement of PW1 Gurbhej Singh on 15.11.2011 when Gurbhej Singh was fit as well as ready to make the statement on 15.11.2011. The only version given by the prosecution regarding delay in lodging the FIR is that matter was being tried to be compromised by the Panchayat, but PW1 Gurbhej Singh has admitted in his cross-examination that he did not remember the date of alleged compromise by the Panchayat. It was incumbent upon PW1 Gurbhej Singh to have specifically stated that the efforts for compromise was made between 15.11.2011 and 16.11.2011, but he has failed to do so. PW1 Gurbhej Singh has also admitted that no attempt was ever made to collect the pellets from the spot. He even did not tell whether the police collected the pellets or not, thus, the entire testimony of PW1 Gurbhej Singh shatters the evidence. More significantly, Gurbhej Singh has stated in the cross-examination that he could not tell when the first shot was fired. He has stated that he also could not tell when the second shot was fired. It strengthens the version of the defence counsel that acutally no shot was fired at the spot on the relevant day.

23. *There is still another aspect of the matter as per PW1 Gurbhej Singh, he earlier got recorded with the police that Ajit Singh asked his son to bring his double barrel gun, but when the attention of this witness was drawn towards his statement Ex.P1, then it was found that single barrel gun was mentioned, so there is high suspicion regarding the type of weapon the shot fired from the weapon as no ballistic report is on record and no injury was even caused to any one. Thus, I fully agree with the contentions of learned defence counsel that the prosecution has miserably failed to bring home the guilty*

of the accused beyond any shadow of doubt, rather the testimonies of all the prosecution witnesses do not inspire confidence. In these circumstances the accused are hereby acquitted from the charge framed against them. The case property be disposed off as per rules after the expiry of the period allowed for appeal/revision, if any. The bail bonds and surety bonds of all the accused stands discharged. File be consigned to the record room.”

Counsel for the petitioner has argued that the petitioner was found innocent during the investigation. As per the statement of PW1 which is attached as Annexure P5, Ajit Singh – co-accused raised a *lalkara* and asked his son – Harpreet Singh (petitioner herein) to bring his 12 bore gun from the house and the petitioner brought the 12 bore gun of the accused – Ajit Singh after that Ajit Singh raised *lalkara* and the petitioner fired the shot which, however, did not hit any person. Counsel has further submitted that it has come in the evidence of the prosecution in the trial faced by the co-accused that, in fact, there is not ballistic report to prove that any fire arm was used in the incident. It is also admitted by the complainant that a property dispute is going on between the parties. It is also argued that Ajit Singh is the father of the petitioner and, therefore, the alleged involvement of the petitioner by PW1 is only on account of the property disputed. Counsel for the petitioner has cited the judgment of the Hon'ble Supreme Court **“Hardeep Singh vs State of Punjab”, 2014(1) RCR (Criminal) 623** to submit that the evidence which has come on record of trial Court against the petitioner is not *prima facie* more than convincing to convict the petitioner of the charges, especially, in view of the fact that the main accused have already been acquitted by the trial Court.

On the other hand, counsel for the State assisted by counsel for the complainant/respondent No.2 has not disputed the fact that the co-accused have already been acquitted by the trial Court vide order dated 27.10.2016 but opposed the submission made by counsel for the petitioner on the ground that the evidence against the petitioner must be led independently for proving his guilt.

After hearing counsel for the parties, I find merit in the present petition. The perusal of the FIR, statement of the complainant who appeared as PW1 which has already been testified by the trial Court while passing the judgment of acquittal, nowhere proves that there is sufficient evidence on record to summon the petitioner under Section 319 Cr.P.C. in view of the judgment of the Hon'ble Supreme Court *Hardeep Singh's case (supra)*.

Accordingly, this revision petition is allowed and the impugned order dated 12.06.2014 passed by the trial Court vide which the petitioner was summoned as an additional accused is set-aside.

(ARVIND SINGH SANGWAN)
JUDGE

12.09.2017
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No