

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR No.222 of 2016 (O&M)

Date of Decision: 20.02.2017

Sukha @ Sukhwinder

... Petitioner

Versus

State of Haryana

... Respondent

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

Present:- Mr. J.S.Bedi, Senior Advocate with
Mr. Karan Sidhu, Advocate,
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Saurabh Sharma, Advocate,
for the complainant.

TEJINDER SINGH DHINDSA, J.(ORAL)

The instant revision petition is directed against the order dated 11.12.2015 passed by the learned Additional Sessions Judge, Kurukshetra in terms of which the present petitioner has been summoned to face trial as an additional accused in FIR No.393 dated 08.10.2014, under Sections 148, 149, 323, 324, 302, 506 IPC and Section 25 of the Arms Act, registered at Police Station Sadar Thanesar.

A brief narration of facts would be necessary.

FIR in question came to be registered at the instance of Karambir in relation to an occurrence dated 07.10.2014 and in which brother of the complainant, namely, Sukhbir lost his life and father of the complainant, namely, Mai Chand suffered injuries.

As per prosecution version, an altercation took place between the complainant and one Zile Singh over the use of a common path

8:00-8:30 p.m. father and brother of the complainant were going towards their fields on a motorcycle to give food to the labourers who had been engaged to harvest the paddy crop. Having parked their motorcycle and while proceeding towards their fields, Zile Singh raised a lalkara that both father and son i.e. Mai Chand and Sukhbir (since deceased) be eliminated. Allegations are that Ajmer Singh, Zile Singh sons of Ram Kishan, Sukha @ Sukhwinder (present petitioner), Suresh and Malkeet Singh along with 15-20 other persons attacked with lathis and rods. Malkeet Singh is stated to have given a knife blow in the abdominal area of Sukhbir and thereafter twisted the same. Upon hearing the noise, Jasbir Singh son of Fakir Chand, Ranbir Singh son of Mai Chand along with other persons of the village as also the labourers reached the spot and thereupon the accused persons fled away. Sukhbir and Mai Chand were taken to LNJP Hospital for treatment and Sukhbir was referred to PGI but succumbed to his injuries on the way.

Upon investigation being concluded, Malkeet @ Tinku son of Zile Singh, Zile Singh and Ajmer Singh sons of Ram Kishan, Harbans Singh @ Golu son of Dev Singh and Suresh son of Ram Chander were challaned. Name of the present petitioner was, however, placed in column No.2.

An application under Section 319 Cr.P.C. having been moved by the prosecution, the same has been accepted leading to the passing of the impugned order and in terms of which the present petitioner has been summoned to face trial as an additional accused.

Perusal of the impugned order would reveal that the application under Section 319 Cr.P.C. to summon the present petitioner as an additional accused has been passed on the basis of deposition and statement recorded

of PW-6 Jasbir Singh.

Counsel for the parties have been heard at length.

Section 319 of the Cr.P.C. reads as under:-

“319 Cr.P.C. - 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 subsection (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 of the Code of Criminal Procedure 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) RCR (criminal) 504*** and it was observed that the

charge but for the purpose of summoning a person who did not figure as an accused, a different legal principle is required to be applied. It was categorically held that the Court exercises its jurisdiction under Section 319 Cr.P.C. on the basis of fresh evidence brought before the Court. As such a clear distinction was delineated with regard to the stage for framing of charge as opposed to the exercise of power under Section 319 Cr.P.C.

In Hardeep Singh Vs. State of Punjab and another 2014 (1)

RCR (criminal) 623 the Apex Court held as follows:

“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.

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 face case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, 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.”

The impugned order dated 11.12.2015 whereby the present petitioner has been summoned to face trial as an additional accused would reveal that the application under Section 319 Cr.P.C. has been allowed based on the deposition of PW-6 Jasbir Singh. The deposition of Prosecution Witness No.6 Jasbir Singh has been perused by this Court as the same has been placed on record and appended as Annexure P-1. The relevant extract thereof reads as follows:-

“Mai Chand and his son Sukhbir stopped motorcycle on the burm of the mated road and started going to the fields through Gohar as they had brought the meals for the labourer. As soon as Mai Chand and Sukhbir reached on the turning of the Gohar, Zile Singh, Ajmer Singh, Malkeet Singh @ Tinku, Suresh Bangro, Sukhbinder @ Sukha Bangro, Harbans Singh son-in-law of Ajmer Singh, resident of Patiala, who were already present there duly armed with lathies and bindas attacked upon them. Malkeet @ Tinku was already armed with a knife. Before that Zile Singh raised lalkara that Sukhbir Singh and Mai Chand be killed to finish the daily dispute. Malkeet Singh gave a knife blow in the abdomen of Sukhbir Singh and twisted the same. All the remaining accused caused injuries along with lathies and bindas upon Mai Chand and Sukhbir Singh. I was present near the place of occurrence in my fields and I know both the parties and the occurrence had taken place in my presence. On hue and cry raised by me, Karambir, Ranbir and labourers working in the fields and other villagers also reached at the spot. Whereupon all the accused fled the spot.”

In his deposition PW-6 Jasbir Singh has not assigned any specific role/injury to the present petitioner. There are general allegations

of the petitioner being present on the spot and armed with lathi/binda and having attacked upon Sukhbir (since deceased) and his father Mai Chand. PW-6 Jasbir Singh has deposed on the same lines as that of the complainant Karambir. Specific attribution is to Malkeet by having given a knife blow in the abdomen of Sukhbir and thereafter having twisted the knife.

The post-mortem report of deceased Sukhbir Singh has been placed on record at Annexure P-2.

As per post-mortem report, Sukhbir Singh received only one injury in the abdominal area with a sharp edged weapon and which has been specifically attributed to Malkeet Singh.

Even though the complainant as also PW-6 Jasbir Singh who was alleged to be an eye witness have alleged the present petitioner to be armed with wooden log and having attacked Mai Chand along with a number of other co-accused yet the MLR of Mai Chand placed on record at Annexure P-3 reflects only two simple injuries on the person of Mai Chand.

In the considered view of this Court, the matter required cogent evidence to be led before the trial Court to indicate more than the mere probability of the complicity of the petitioner in the commission of offence. No such evidence has come forth. There are general allegations as per deposition of PW-6 Jasbir Singh recorded before the trial Court against the present petitioner. Such allegations of having attacked Sukhbir Singh (deceased) with a wooden log are not corroborated from the medical evidence on record. Even as regards injured Mai Chand is concerned, he was alleged to have been assaulted by the petitioner as also a number of other co-accused. Medical evidence indicates only two simple injuries having been suffered by Mai Chand.

This Court would have no hesitation in holding that the impugned order summoning the present petitioner to face trial as an additional accused has been passed in a routine and casual manner and the reasoning adopted therein goes against the dictum as laid down by the Apex Court in *Hardeep's Singh case (Supra)*.

For the reasons recorded above, the present petition is allowed. The impugned order dated 11.12.2015, passed by the learned Additional Sessions Judge, Kurukshetra is quashed.

Disposed of.

20.02.2017

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes