

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

(1)

Crl. Revision No.3371 of 2016(O&M)
Date of Decision:December 22, 2017

Surain Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

(2)

Crl. Revision No.490 of 2017(O&M)

Harnam Chand

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Kamal Narula, Advocate
for the petitioner in CRR No.3371 of 2016.

Mr. S.P.S. Sidhu, Advocate
for the petitioner in CRR No.490 of 2017.

Mr. Davinder Bir Singh, DAG Punjab.

Mr. Gurpreet Jayia, Advocate
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

Through this order, this court shall dispose of above captioned
two criminal revisions i.e. **Criminal Revision No.3371 of 2016** titled as

“Surain Singh vs. State of Punjab and others” and Criminal Revision No.490 of 2017 titled as **“Harnam Chand vs. State of Punjab”** as the same arisen out of the common order.

2. In both the above-said criminal revisions, the order under challenge is order dated 02.07.2016 passed by learned Additional Sessions Judge, Fazilka, whereby the application filed by the prosecution under Section 319 Cr.P.C. for summoning of additional three accused namely Kuldeep Chand, Harnam Dass *alias* Chandi and Jeet Ram was partly allowed and only Kuldeep Chand and Harnam Chand were ordered to be summoned to face the trial, whereas, Jeet Ram was not summoned, as an accused. In CRR No.3371 of 2016, the complainant-petitioner has assailed the impugned order, on the ground that there are specific allegations against Jeet Ram and without appreciating the material on record, the trial court has not issued summoned Jeet Ram. Whereas, in CRR No.490 of 2017, Harnam Chand has challenged the impugned order, on the ground that no new material was placed on record of the trial court, which could justify his summoning under Section 319 Cr.P.C.

3. The brief facts of the case are that FIR No.196 dated 14.12.2015, under Section 366, 366-A, 376, 120-B of Indian Penal Code came to be registered at Police Station Sadar Jalalabad, District Fazilka, on the statement of Surain Singh, in which he stated that he had five children, three are sons and two daughters and youngest of the five was his daughter Veena Rani. His mother Milko Bai was looking after his children. On 08.12.2015, he along with his sons went to the brick kiln to prepare the bricks and his mother Milko Bai and daughter Veena Rani were present at the house. At about 11.30 a.m. their neighbour Manjit Kaur wife of Kuldeep

Chand came at their house and took his daughter Veena Rani to her house on the pretext of plucking vegetable. When he came back at his house in the evening, then his mother Milko Bai disclosed that his daughter had been taken by Manjit Kaur. Thereafter, he visited the house of Kuldeep Chand and others to inquire about his daughter, but they were not present in their house. It was mentioned that Kuldeep Chand husband of Manjit Kaur, her brother Jassu and one Harnam Chand @ Chandi Ram were already present there and they in connivance with each other made his daughter sit in the car of Harnam Chand. It is alleged by the complainant that Manjit Kaur, Kuldeep Chand had lured his daughter on the pretext of solemnizing her marriage with her brother Jassu.

4. After registration of the FIR, the matter was investigated and prosecutrix was got recovered. the statement of the prosecutrix was recorded under Section 164 Cr.P.C. on 24.12.2015 by the JMJC Jalalabad immediately after she managed to escape from the accused who had taken her to Uttar Pradesh. After completing the investigation, challan was presented by the Investigating Agency only qua Manjit Kaur and Jaswinder Chand @ Jassu, whereas Kuldeep Chand, Harnam Dass alias Chandi Ram and Jeet Ram were kept in column No.2. After framing the charges, prosecutrix appeared in the witness box as PW1 and her examination-in-chief was recorded and cross-examination was partly recorded and further cross-examination was deferred.

5. It is thereafter that an application under Section 319 Cr.P.C. came to be filed for summoning Kuldeep Chand son of Lachman Dass, Harnam Dass alias Chandi Ram son of Mall Ram and Jeet Ram son of Salamat Ram as additional accused to face trial on the ground that all the

five accused were named in the FIR lodged by the complainant and they were also named in the statement of the prosecutrix under Sections 161 and 164 Cr.P.C. It is alleged by the prosecution that the three persons, who were not challaned by the police, had actively participated in the crime, which is duly corroborated by the prosecutrix.

6. The said application under Section 319 Cr.P.C. came to be partly allowed by the learned trial court vide the impugned order dated 02.07.2016. It is the said order dated 02.07.2016 passed by the trial court that has been assailed in both the criminal revisions before this court.

7. Mr. Kamal Narula, learned counsel appearing on behalf of complainant-petitioner in CRR No.3371 of 2016 argued that the trial court without appreciating the material available on record passed the impugned order and has not issued summons against Jeet Ram as an accused, whereas, there are specific allegations levelled against him and he played an active role with the other co-accused.

8. Per contra, Mr. Gurpreet Jayia, learned counsel appearing on behalf of respondent No.2-Jeet Ram in CRR No.3371 of 2016 argued that there is no illegality in the impugned order dated 02.07.2016 passed by learned Additional Sessions Judge, Fazilka, in not summoning Jeet Ram as an accused, who has been named by the prosecutrix while appearing into the witness box as PW-1. It is also argued that the impugned order so passed by the trial court is well reasoned and no ground is made to interfere with the same.

9. On the other hand, Mr. S.P.S. Sidhu, learned counsel appearing on behalf of petitioner-Harnam Chand in CRR No.490 of 2017 argued that after the registration of the FIR, a detailed investigation was conducted and

challan was presented against Jaswinder Chand @ Jassu and Manjit Kaur wife of Kuldeep Chand. During investigation, it was found that Harnam Chand-petitioner has been falsely implicated in the present case due to animosity between warring factions in the village, as he was earlier Sarpanch of the village.

10. I have heard learned counsel for the parties and perused the record of the case.

11. The learned trial court by its order dated 02.07.2016 partly allowed the application filed by the prosecution under Section 319 Cr.P.C. with the following observations;-

“I have gone through the statement of the complainant Surain Singh, on the basis of which FIR in question was lodged. Perusal of his statement shows that only the names of Kuldeep Chand and Harnam Dass @ Chandi Ram have come in his statement and even in the initial statement of the prosecutrix recorded by the I.O., only the names of Kuldeep Chand and Harnam Dass can be seen. Jeet Ram has not been named either by the complainant Surain Singh or the prosecutrix in their initial statements, as such, no ground is made out for summoning Jeet Ram, who has been named by the prosecutrix at the time of appearing into the witness box as PW-1 as the said statement seems to be the result of after thought. In view of the documents on file and the statement of PW-1, Kuldeep Chand and Harnam Dass are ordered to be summoned to face

trial for offence under Section 363/366-A/376 IPC for 16.07.2016”.

From the above observations given by the trial court, it is clear that the only basis for not summoning Jeet Ram as an accused under Section 319 Cr.P.C. was that in the initial statement Jeet Ram has not been named either by the complainant or the prosecutrix and it is only at the time of appearing in the witness box as PW-1, he has been named by the prosecutrix. Whereas, the grievance of complainant-petitioner is that the impugned order has been passed by the trial court, without appreciating the material available on record, since Jeet Ram has played an active role with other co-accused in the commission of crime.

12. This court has gone through the statement of Surain Singh, on the basis of which the instant FIR came to be registered, in which only Manjit Kaur wife of Kuldeep Chand, Kuldeep Chand, Jassu and Harnam Chand @ Chandi Ram have been named as accused and consequently, on the basis of the said statement, the FIR was registered only against the above-said four persons.

13. What is interesting to see here is the statement of the prosecutrix recorded under Section 164 Cr.P.C., before JMIC, Jalalabad, after she had been recovered on 24.12.2015. In her initial statement itself recorded before the Magistrate, the prosecutrix leveled allegations that *when she reached the house of Manjit Kaur, there Chandi Ram alias Harnam Chand, Jeet Ram, Kuldeep Chand and Jassu were already present.* It is *inter alia* stated by the prosecutrix that Manjit Kaur prepared and served tea and all of them had it, and after having tea, she became dizzy. *Chandi Ram and Jeet Ram made her sit in a car.* She remained conscious

for about 4-5 minutes and thereafter, she became unconscious. After that she does not know where they took her. It was alleged by the prosecutrix that these people took her 3 /4 nights in the car to different places and Jassu took her in a different room and committed illegal act. One day, she heard Chandi Ram talking on mobile phone that her price had been settled and she will be sold . Thereafter, she secretly left that place and with the help of 4-5 persons reached the house of her aunt in Jalalabad City. In her above-said statement recorded before the Magistrate under Section 164 Cr.P.C., the prosecutrix apart from naming Manjit Kaur wife of Kuldeep Chand, Kuldeep Chand, Jassu and Harnam Chand @ Chandi Ram, had also named Jeet Ram as a perpetrator, who actively participated in the crime. Moreover, while appearing into the witness box as PW-1, the prosecutrix named all the five persons as accused.

14. Section 319 of Cr.P.C. deals with the power of the court to proceed against other persons appearing to be guilty of offence. Section 319 of Cr.P.C. read 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.”

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 strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and is not to be exercised in a casual and cavalier manner.

15. The impugned order has also been challenged by Harnam Chand @ Chandi Ram, on the ground that after the registration of the FIR, a detailed investigation was conducted and it was found that Harnam Chand has been falsely implicated in the present case due to animosity between warring factions in the village, as he was earlier Sarpanch of the village.

16. This court had also called for the inquiry report submitted by DSP, Sub Division, Jalalabad. A perusal of the said inquiry goes on to show that DSP, Sub Division, Jalalabad has recommended that during inquiry, Harnam Chand @ Chandi Ram, Kuldeep Chand and Jeet Ram were found to be innocent, while stating that Jaswinder Chand @ Jassu and Manjit Kaur are the real accused in the instant case. As per the inquiry report submitted, on 08.12.2015, accused Harnam Chand @ Chandi Ram had visited the farm of Kamal Dhurian at village Jodha Bhaini in connection with the affairs of his land, whereas accused Kuldeep Chand had gone for the work of labour on the farm on 08.12.2015. Further, Jeet Ram was present at his kiln at

Village Naju Shah, District Ferozepur on the day of incident in connection with his business. Whereas, in her statement recorded before the Magistrate under Section 164 Cr.P.C., the prosecutrix has leveled specific allegations that *when she reached the house of Manjit Kaur, there Chandi Ram alias Harnam Chand, Jeet Ram, Kuldeep Chand and Jassu were already present.* It is *inter alia* stated by the prosecutrix that Manjit Kaur prepared and served tea and all of them had it, and after having tea, she became dizzy. *Chandi Ram and Jeet Ram made her to sit in a car.* She remained conscious for about 4-5 minutes and thereafter, she became unconscious. After that she did not know where they took her. It was alleged by the prosecutrix that these people took her 3 /4 nights in the car on different places and Jassu took her in different room and committed illegal act.

17. In ***Hardeep Singh vs. State of Punjab and others, (2014) 3 Supreme Court Cases 92***, the Hon'ble Supreme Court has observed that the object of Section 319 of Cr.P.C. is that a real culprit should not get away unpunished. This is part of concept of "fair trial". Provision is based on the doctrine *judex damntur cum nocens absolvitur* (Judge is condemned when guilty is acquitted). Court should give full effect to words used in the provision. Degree of satisfaction for invoking Section 319 Cr.P.C. should be of more than a prima facie case as exercised at time of framing of charge, Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial.

18. In the instant case, the substance of the statement of the prosecutrix was recorded before Magistrate at Jalalabad under Section 164 Cr.P.C. on 24.12.2015, where she named Jeet Ram And Harman Chand. She

also deposed on the same lines while appearing into the witness box as PW-1. The trial court has erred in holding that there is an improvement and the name of Jeet Ram has been added as an after thought. Even though the complainant may not have mentioned the name of Jeet Ram in the FIR, it cannot be lost sight of that the FIR is not an encyclopedia of the entire facts and is an initial statement only to set the criminal process in motion. How would the complainant know who all were involved in the commission of the offence? It is settled principle that the statement recorded by the Investigating Officer under Section 161 Cr.P.C., has lesser value than the statement recorded before the Magistrate under Section 164 Cr.P.C. The trial court, while passing the impugned order partly allowing the application under Section 319 Cr.P.C. did not take note of the statement recorded by the prosecutrix under Section 164 Cr.P.C. in which, Jeet Ram has also been named as a culprit. So from this perspective, the order of the trial court in not summoning Jeet Ram as an accused, does not seem to be justified.

19. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. It is not uncommon that the real accused, at times, get away by manipulating the investigation and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes effort at time to get himself absolved even at the stage of investigation or inquiry, even though he may be connected with the commission of offence. Reliance in this regard has been placed on the decision of the Hon'ble Supreme Court in ***Hardeep Singh vs. State of Punjab and others (supra)***.

20. In view of the above discussion, this court is of the considered view that the impugned order 02.07.2016 to the extent of disallowing the

application filed by the prosecution under Section 319 Cr.P.C. in not summoning Jeet Ram to face trial as an accused is liable to be set aside. Whereas, no ground is made out to set aside the impugned order qua Harnam Chand @ Chandi Ram, once he has been specifically named in the FIR, thereafter by the prosecutrix in her statement recorded by Magistrate under Section 164 Cr.P.C. and further in the statement recorded by the prosecutrix as PW-1 before the trial court.

21. In view of the foregoing discussion and ratio of law, Criminal Revision No.490 of 2017 filed by petitioner-accused Harnam Chand @ Chandi Ram is hereby dismissed. Whereas, Criminal Revision No.3371 of 2016 is allowed by holding that prima facie there is more than sufficient material available on record to summon Jeet Ram as an accused to face trial along with his co-accused.

22. It is made clear that anything observed by this hereinabove shall have no affect on the merits of the case, which is only for the purpose of deciding the criminal revisions.

December 22, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No