

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CRR No.1028-2017

Date of Decision: 17.03.2017

Ajeem

.....Petitioner

vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Kunal Dawar, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

By this revision petition, the petitioner has challenged the order of the learned trial Court (Additional Sessions Judge (1), Palwal), dated 20.12.2016, dismissing the application filed by the petitioner (complainant in the FIR in question), under Section 319 Cr. P.C., seeking to summon the 2nd and 3rd respondent herein, Umar and Taufiq sons of Sodan, as accused in the trial pending, pursuant to FIR No.275 having been registered at Police Station Hathin, District Palwal, on 17.09.2015, alleging therein the commission of an offence punishable under Section 302 of the IPC, read with Section 34 thereof.

The investigating agency having submitted a report under Section 173 Cr. P.C. only against one Harun and Asif, excluding respondents no.2 and 3 herein as accused, the application came to be filed before the trial Court, which was dismissed.

Learned counsel for the petitioner has vehemently argued that the

learned trial Court has wholly erred in holding that there has to be a reasonable prospect of conviction of the person (s) sought to be summoned on an application filed under Section 319 Cr.P.C., whereas as per the judgment of the Supreme Court in Hardeep Singh vs. State of Punjab and others 2014 (3) SCC 92, it has been held as follows:-

“Question No. (iii) : Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

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77. It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to it while making an inquiry into or trying an offence, that the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused.

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79. The word "evidence" therefore has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 Cr.P.C. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes

more onerous to invoke such powers cautiously on such material after evidence has been led during trial.

80. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 Cr.P.C. The 'evidence' is thus, limited to the evidence recorded during trial."

Having considered the argument, though as regards the principle, obviously the ratio of the judgment of the Supreme Court is binding on any other Court and is to be followed; but in the present case, I do not see how that ratio would apply to the circumstances, where there is a palpably obvious improvement in the testimony of the petitioner-complainant, to the extent that in the FIR, it is stated that it was Harun who came to his shop and attacked his father with a 'Kulhari' on his head. The FIR further states that Hasim son of Manjit, resident of Lakhanaka, has seen the incident and that "after some time Umar son of Sodan and Taufiq son of Sodan resident of Lakhanaka also came to the spot. Asif, Umar and Harun chased me to beat me. I ran away and told everything to my uncle Fazru son of Lehar Khan and therefore, me and my uncle came to the spot and took my father to Government Hospital, Hathin where after observing the serious condition of my father, the Doctor Sahib referred us to Nalhar Hospital, Nuh. On reaching Nalhar Hospital, Nuh we were referred to Delhi Hospital by the Doctor."

In the testimony of the complainant, on the other hand, he stated

as follows:-

“At around 3:00 p.m., Harun along with his brother Umar and Tufiq to came my shop with holding lathi in their hands and accused Harun was having axe in his hand. They start abusing my father, on which my father resist them not to abuse to my father. Upon which, all accused had assaulted my father, accused Tufiq and Umar caught hold of my fathers' hands and asked Harun to assault on head of my father with axe. Accused Harun had given an axe blow on the head of my father. Due to which, my father fell down on cot. All accused had chased my with intention to kill me. I ran away and reached the residence of my uncle namely Fazru and I narrated all the incident to my uncle, who came along-with me to the place of occurrence.”

Hence, very obviously, whereas in the FIR the complainant had stated that it was only Harun who came to his shop and attacked his father with a 'Kulhari' on his head and then, after sometime, Umar and Taufiq also came to the spot, after which all three of them, i.e. Harun, Umar and Asif chased him and beat him, yet in his testimony, he made a whole new story by stating that Harun alongwith his brother Umar and Taufiq came to his shop holding lathis in their hands, with Harun holding an axe.

Thus, in the FIR specifically it was contended that Harun had come and hit the complainants' father on the head with a 'Kulhari' and Umar and Asif had come “after sometime”, and all three of them thereafter chased the complainant. However, in his testimony he improved his statement to say that Harun and Asif and Umar all came together with Asif and Umar holding lathies in their hands. All of them abused his father and thereafter, Taufiq and Umar caught hold of the hands of his father and asked Harun to assault him with an axe.

The learned trial Court having taken specific notice of the aforesaid improvement, therefore, refused to entertain the application under Section 319 Cr.P.C., seeking to summon Umar and Taufiq as accused, in a case seeking their trial in respect of an offence punishable under Section 302 IPC.

I see no reason to differ with the reasoning of the trial Court in any manner. Hence, finding no merit in this petition, it is dismissed.

However, nothing observed hereinabove shall be construed by the trial Court to be an observation with regard to the merits of the case for or against those accused as are being tried by that Court. The observations of this Court are limited to the improvement in the testimony qua those now sought to be summoned as accused, vide the application made under Section 319 Cr. P. C.

(AMOL RATTAN SINGH)
JUDGE

March 17, 2017
nitin/dinesh

Whether speaking/reasoned	Yes
Whether Reportable	No.