

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

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Date of Decision: 25.10.2017.

CRR No.596 of 2016 (O&M)

Surinder Singh

....Petitioner.

Versus

State of Punjab

....Respondent.

WITH

CRR No.690 of 2016 (O&M)

Makhanjit Singh

....Petitioner.

Versus

State of Punjab and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Ankur Mittal, Advocate for the petitioner.

Ms. Monika Jalota, Deputy Advocate General, Punjab.

Ramendra Jain, J.(Oral)

This order shall dispose of the aforementioned two revision petitions filed by Surinder Singh and Makhanjit Singh challenging a single order dated 10.12.2015 passed by learned Additional Sessions Judge, Jalandhar, vide which they have been summoned as additional accused on an application filed under Section 319 of the Code of Criminal Procedure (for short, ('Cr.P.C.')).

Briefly stated, in the cross version, Mohan Singh (injured) got recorded his statement with the police that at around 12 midnight in the

intervening night of 07/08.06.2012, some unsocial elements tried to illegally and forcibly possess their joint holding, for which the police was informed and it visited the spot in the night itself. On seeing the police, 12 persons (names given by injured-Mohan Singh in his initial statement before the police) present at the spot, alongwith some unknown persons, sped away from the spot. Nephew of injured-Mohan Singh, namely, Sarabjit, witnessed the whole incident. Thereafter, at around 9:30 a.m., on 08.06.2012, the assailants, armed with deadly weapons, again came to their property and started raising wall unauthorizedly and also caused injury to him.

On the basis of the above statement of injured-Mohan Singh, cross version against complainant Angrej Singh was registered. After completion of investigation, the police presented final report under Section 173 Cr.P.C. only against three persons, namely, Gurdev Singh, Balbir Singh and Pargat Singh, who were charge sheeted under Sections 324, 308, 427, 148 and 149 of the Indian Penal Code (for short, 'IPC'), to face trial. During trial, the prosecution moved an application under Section 319 Cr.P.C. to summon some more persons as additional accused, which has been accepted vide the impugned order.

Learned counsel for the petitioners contends that in the initial version, injured Mohan Singh did not name any of the petitioners as the assailants nor attributed any role to them. Even his nephew, Jaspal Singh, who is alleged to be the eye witness to the occurrence, also did not name the petitioners as the assailants. During investigation, the names of the petitioners surfaced to the Investigating Officer with the allegation that they had handed over a packet of currency notes having denomination of 500 to 8-10 youngsters, who allegedly were the assailants of encroaching the joint

holding of injured Mohan Singh, but were found innocent and thus were not challaned. No role, whatsoever, has been attributed to the petitioners by injured Mohan Singh, as PW3 in the Court. Even his nephew, Jaspal Singh, while appearing in the Court, did not name the petitioners as the assailants. The learned trial Court has wrongly and illegally summoned the petitioners.

On the other hand, learned counsel for the respondent-State has vehemently opposed the above submissions.

I have given anxious consideration to the submissions made by both the sides.

Undisputedly, injured Mohan Singh did not name the petitioners in his initial statement Ex.PW3/A before the police nor his nephew, Jaspal Singh, who is an eyewitness to the occurrence, in his statement under Section 161 Cr.P.C. During investigation, the names of the petitioners surfaced with the allegations that they had handed over a packet of currency notes to 8-10 young boys. Even, at that moment, the petitioners were not named as the assailants for causing injuries to injured Mohan Singh. For the first time, the names of the petitioners were disclosed by injured Mohan Singh in his statement before the Court as PW3. Perusal of the same shows that only general allegations are levelled against the petitioners without attributing any specific role. The petitioners are stated to be accompanying the main assailants, namely, Angrej Singh etc. Injured-Mohan Singh also testified that petitioner Makhanjit Singh had hit him while he was standing there, but no weapon, either blunt or sharp, has been shown with him. The entire statement of injured Mohan Singh (PW3), if gone through carefully, the same only can be termed as vague against the petitioners. Undisputedly, the nephew of injured Mohan Singh, namely,

Jaspal Singh as PW1 did not attribute any role to the petitioners. Even he did not name them as the assailants of his uncle injured Mohan Singh. The trial Court has summoned the petitioners under the impression that injured Mohan Singh has also named them in his initial complaint before the police, but the said observation is factually incorrect. The non-naming of the petitioners by injured Mohan Singh in his initial statement Ex.PW3/A, before the police and then naming them for the first time in the Court as PW3, is nothing, but unilateral improvement which can safely be termed as an after thought.

By this time, it is well settled that powers under Section 319 Cr.P.C., being extraordinary in nature, are to be used sparingly. In **Hardeep Singh v. State of Punjab, 2014(1) R.C.R. (Criminal) 623**, the Hon'ble Apex Court has observed as under:-

“Power under [Section 319](#) Cr.P.C. can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some ‘evidence’ against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The ‘evidence’ herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under [Section 319](#) Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross- examination

of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.”

In the light of the observation of the Apex Court referred to above, perusal of the impugned order shows that the trial court has acted in a casual and cavalier manner in passing the impugned summoning order against the petitioners without going deep into the merits of the case inasmuch as the petitioners were not named in the F.I.R.

In view of the above discussion and facts and circumstances, both these petitions are accepted and the impugned order dated 10.12.2015 is hereby set aside.

(RAMENDRA JAIN)
JUDGE

25.10.2017
jitender sharma

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No