

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR No.1414 of 2017 (O&M)
Date of Decision: 18.05.2017

Lalita

--Petitioner

Versus

State of Haryana and others

--Respondents

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

Present:- Mr. Sunil Saharan, Advocate for the petitioner.

TEJINDER SINGH DHINDSA.J

The instant revision petition is directed against the order dated 18.3.2017, passed by the learned Additional Sessions Judge, Hisar, whereby an application moved by the prosecution under Section 319 of the Code of Criminal Procedure (herein after to be referred as the Code) to summon respondents no.2 to 9 to face trial as additional accused in case FIR No.108 dated 16.5.2016 under sections 324, 326, 506 I.P.C and section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station, Uklana, has been dismissed.

It may briefly be noticed that FIR in question was registered on the statement of Lalita wife of Hardeep relating to an incident that allegedly took place on 15.5.2016. The incident is stated to have its genesis in a dispute relating to a street and in which Chandro and Sunita, mother-in-law and aunt respectively of the complainant are stated to have suffered injuries.

Learned counsel appearing for the petitioner would submit that in the initial version of the complainant and which had led to the registration of the FIR, the names of the private respondents had been mentioned and specific roles had been attributed. It is argued that the

investigating agency had played a partisan role and had only challaned Krishan son of Des Raj, whereas the private respondents were found innocent and their names were reflected in column no.2. Counsel submits that in the deposition before the Trial Court, the complainant having been examined as PW-7 has again reiterated her initial version and has assigned specific roles and raised specific allegations against the private respondents herein and as such, the Trial Court has erred in not summoning them as additional accused to face trial. Another argument raised is that the application moved under Section 319 of the Code has been accepted qua Surender son of Des Raj and which in itself would reflect that the Trial Court has found sufficient evidence to partly allow the application in so far as the afore-noticed accused is concerned and there was no basis to distinguish the case of the private respondents herein and for not having summoned them as additional accused.

Counsel for the petitioner has been heard at length.

Section 319 of the Code of Criminal Procedure reads as under:

“319. Power to proceed against other persons appearing to be guilty of offence:- (1) Where, in the course of any enquiry 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 sub-section (1), then-

(a) The proceedings in respect of such person shall be commenced afresh, and witnesses reheard;

(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 v. State of Jharkhand, 2009(1) RCR (Criminal) 504** and it was held as follows:

“The principle of strong suspicion may be a criterion at the stage of framing of charge as all the materials brought during the investigation were required to be taken into consideration, but for the purpose of summoning a person who did not figure as accused, a different legal principle is required to be applied. A Court framing charge would have before it all the materials on record which are required to be proved by the prosecution. In a case where however the Court exercises its jurisdiction under Section 319 of the Code, the power has to be exercised on the basis of the fresh evidence brought before the Court. There lies a fine but clear distinction.”

In the recent judgment rendered by the Apex Court titled as **Hardeep Singh v. State of Punjab and others, 2014(1) RCR (Criminal) 623**, it was observed that although only prima facie case is to be established from the evidence led before the Court while exercising power under Section 319 of the Code of Criminal Procedure to summon additional accused but it would require much stronger evidence than mere probability of complicity in the offence of such persons sought to be summoned as

additional accused. The test that has to be applied is one which is more than prima facie case as exercised at the stage of framing of charge but short of satisfaction to an extent that the evidence, if gone unrebutted, would lead to conviction. In the absence of such satisfaction, the Court would refrain from exercising its powers under Section 319 of the Code of Criminal Procedure.

Adverting back to the facts of the present case, FIR was registered on the statement of Lalita. As per initial version, she had stated that on 15.5.2016 she along with her aunt Sunita wife of Des Raj and mother-in-law Chandro were present in the house and thereupon Joginder @ Babloo son of Ramehswar forcibly gained entry in the house to which her mother-in-law objected. It was asserted that Joginder responded by stating in a loud voice that I will give you a plot in the street. Thereupon, Dharampal and Wazir sons of Chand also entered the house and started abusing the complainant party. They were also joined with certain ladies i.e. Kamlesh wife of Krishan, Ramrati wife of Surender, Sunita wife of Rajender, Birmati wife of Des Raj and Kamlesh wife of Raju. Allegations are that the accused party caught hold of Chandro i.e. mother-in-law of the complainant and dragged her outside the house. At this stage, Sunita, aunt of the complainant tried to rescue Chandro and whereupon Surender and Krishan sons of Des Raj and who were carrying spades in their hands attacked Chandro and Sunita. Chandro is stated to have received a spade blow injury on her left foot toe. Upon having raised a hue and cry the assailants ran away from the spot. Complainant alleged that the motive behind the attack was that for the past many days a dispute had been going on between the complainant party with the accused party as regards a piece of land in a street.

Counsel appearing for the petitioner, during the course of arguments would concede that Chandro had suffered an injury on her toe, whereas Sunita had suffered only simple injuries. Further conceded that the complainant Lalita did not suffer any injury.

The deposition of PW-7 Lalita complainant has been placed on record at Annexure P-1. Perusal of the same would reveal that the material improvements have been made at such stage as opposed to the initial version leading to the registration of the FIR. In her deposition Lalita has stated that Joginder, Dharampal and Wazir committed obscene acts with the complainant party i.e. Lalita herself, her mother-in-law Chandro and aunt Sunita. Before the Trial Court she has deposed that even their clothes were torn. In her deposition she has also attributed specific cast related derogatory remarks against the private respondents herein.

The allegations and assertions noticed herein above at the stage of recording of statement of Lalita before the Trial Court as PW-7 did not find any mention in the initial statement recorded and on the strength of which the FIR was registered.

Clearly an attempt has been made to rope in the family members including the ladies/wives of the accused party.

As per prosecution, Chandro has suffered an amputation of the left foot toe and Sunita has suffered simple injuries. Such injuries have been specifically attributed by the complainant Lalita as per initial version as also at the stage of making her deposition before the Trial Court to Krishan and Surender sons of Des Raj and who were stated to have been armed with spades. Krishan already stood challaned and is facing trial. By virtue of allowing the application under Section 319 of the Code, in part,

even Surrender has been summoned as an additional accused.

In so far as the private respondents herein are concerned, no evidence has come forth which would reflect something more than mere probability of their complicity in the offence.

In the considered view of this Court the learned Additional Sessions Judge, Hisar while passing the impugned order dated 18.3.2017 declining the application under Section 319 of the Code qua the private respondents herein has rightly applied the test laid down in ***Hardeep Singh's*** case (supra).

No infirmity in the impugned order is found. Revision petition is, accordingly, dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

18.05.2017

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Whether speaking/reasoned:	Yes
Whether Reportable:	Yes