

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

CRR No.1492 of 2017 (O&M)

Date of Decision: April 25, 2017

Jaspal Singh

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Vikas Bali, Advocate
for the petitioner.

TEJINDER SINGH DHINDSA, J.

1. The instant revision petition is directed against the order dated 21.03.2017, passed by the learned Additional Sessions Judge, Jalandhar in terms of which an application moved by the prosecution under Section 319 of the Code of Criminal Procedure for summoning respondents No.6 to 8 herein as additional accused in case FIR No.52 dated 21.06.2016, under Sections 397, 341, 325, 326 read with Section 34 of the Indian Penal Code, registered at Police Station Lohian, Jalandhar, has been dismissed.

2. Learned counsel at the very outset makes a statement that he is pressing the instant petition only for summoning respondent No.7 i.e. Gurdeep Singh @ Gippi as additional accused in the case.

3. It may be briefly noticed that the FIR in question was registered on the statement of Jaspal Singh-the present petitioner, in relation to an occurrence that took place on 20.06.2016. It was alleged by the complainant/petitioner herein that at about 9.30 P.M. on 20.06.2016, a motorcycle, one hand bag containing ₹45,000/- and other documents had been snatched and taken away by four assailants. It was also alleged that injuries were inflicted.

4. After registration of the FIR and upon completion of investigation, four persons were nominated as accused i.e. Jaswant Singh @ Sattu, Veer Bhan @ Bhana, Kulwant Singh @ Kanti and Gursharan Singh @ Sharan. Charges were framed against the afore noticed four accused and the trial commenced.

5. Application under Section 319 Cr.P.C. was filed by the prosecution to summon respondents No.6 to 8 herein as additional accused and to face trial. Such application has been declined in terms of passing the impugned order dated 21.03.2017. As per statement made by counsel appearing for the petitioner, scope of the present petition, has been confined only as regards summoning respondent No.7 i.e. Gurdeep Singh@ Gippi as additional accused.

6. Learned counsel has argued that the prosecution had examined the complainant/present petitioner as PW-1 and

during the Examination-in-Chief, the petitioner had specifically named respondent No.7 by deposing that he was also involved in the conspiracy to rob the petitioner and in such occurrence, the petitioner had even suffered injuries. Further contended that the main accused i.e. Jaswant Singh @ Sattu in his disclosure statement, made before the police authorities, had named respondent No.7 herein as part of the conspiracy and as such the complainant while appearing before the trial Court had also reiterated such version. As per counsel, the statement made by the complainant, in which the name of respondent No.7 had cropped up, was in itself sufficient to summon such person as additional accused to face trial. Counsel argues that the trial Court without application of mind has dismissed the application filed by the prosecution under Section 319 Cr.P.C.

7. Counsel for the petitioner has been heard at length.

8. 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 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 Sub-section (1) then -

(a) the proceedings in respect of such person shall be commenced afresh, and 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."

9. 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 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 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 a charge would have before it all the materials on record which were 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.”

10. In Hardeep Singh vs. State of Punjab and others 2014(1) RCR (Criminal) 623, it was observed by the Apex Court 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 complied 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 un-rebutted, 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.

11. Adverting back to the facts of the present case, FIR was registered on the statement of the complainant/petitioner and as per his initial version, on 20.06.2016, having finished his daily work of Aadti at Dana Mandi at Kang Khurd at about 9.30 P.M. while he was returning back on his motorcycle, he was accosted by four young persons who came on two motorcycles. As per initial version, the complainant identified and named three amongst the four i.e. Jaswant Singh @ Sattu, Veer Bhan @ Bhana and Kulwant Singh @ Kanti. Complainant did not name the fourth assailant but alleged that such fourth person was armed with a rod. Precise allegations are that the four assailants caused injuries on the person of the complainant and took away a bag containing ₹45,000/- along with other documents as also a mobile phone and motorcycle. Much reliance has been placed upon the disclosure statement made before the police by accused Jaswant Singh @ Sattu and who had named Gurdeep Singh @ Gippi/respondent No.7 herein to be part of the conspiracy for committing the robbery. It would be apposite to take note that after recording of disclosure statement of main accused Jaswant Singh @ Sattu, challan was presented but the version as regards respondent No.7 having also participated in hatching the conspiracy, was disbelieved. Accordingly,

respondent No.7 herein namely Gurdeep Singh was not nominated as an accused.

12. Even the deposition made by the complainant/petitioner Jaspal Singh PW-1 before the trial Court and appended along with the instant petition as Annexure P-2 would be relevant. In such statement, the clear deposition is that the petitioner had been assaulted by four persons. PW-1 has specifically named the four assailants before the trial Court i.e. Jaswant Singh @ Sattu, Veer Bhan @ Bhana, Kulwant Singh @ Kanti and Gursharan Singh @ Sharan. The afore noticed four persons are already facing trial in the case. At the fag end of his statement, complainant has deposed that after some time he came to know that certain others including Gurdeep Singh/respondent No.7 had hatched a conspiracy to rob him.

13. The mere fact that the complainant has mentioned the name of respondent No.7 in his statement before the trial Court to be part of the conspiracy to rob him, would not be sufficient for the Court to have exercise its power under Section 319 Cr.P.C. to summon him as an additional accused as per parameters laid down by the Apex Court in **Hardip Singh's case (supra)**. It is the submission made by the counsel himself that the deposition made by Jaspal Singh as PW-1 before the trial Court was on the strength of the disclosure statement suffered by main accused

Jaspal Singh before the Investigating Agency. Such disclosure insofar as involvement of respondent No.7 Gurdeep Singh is concerned has already been disbelieved. No evidence as such has come forth before the trial Court so as to justify the summoning of respondent No.7 as additional accused to face trial under Section 319 Cr.P.C.

14. In the considered view of this Court, learned Additional Sessions Judge, Jalandhar, while passing the impugned order dated 21.03.2017, declining the application under Section 319 of the Code of Criminal Procedure to summon respondent No.7 herein as additional accused has rightly applied the test laid down in ***Hardip Singh's case (supra)***.

15. No infirmity in the impugned order is found.

16. Revision petition is accordingly dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

25.04.2017
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Whether speaking/reasoned : ***Yes/No***
Whether reportable : ***Yes/No***