

116 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1579-2017 (O&M)
Date of decision-25.05.2017

Dharambir and another

...Petitioners

Vs.

State of Haryana and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sanjay Vashisth, Advocate for the applicant-petitioner(s).

JITENDRA CHAUHAN, J. (Oral)

CRM-14253-2017

Application is allowed as prayed for.

Annexures P-1 to P-13 are taken on record subject to all just exceptions.

CRR-1579-2017

This revision has been filed for setting aside the impugned order dated 23.02.2017 passed by learned Additional Sessions Judge-I, Palwal vide which an application filed by the prosecution under Section 319 Criminal Procedure Code (in short 'Cr.P.C') for summoning petitioners as additional accused for offences under Sections 148 and 302 read with Section 149 of Indian Penal Code and Section 25 of Arms Act was allowed.

Learned counsel contends that during investigation, the petitioners were not found to be present at the place of occurrence and challan under Section 173 of Cr.P.C was not filed against them. In support of this contention, learned counsel cites judgment passed by Hon'ble the Supreme Court in "Brijendra Singh and others vs. State of Rajasthan" in

Crl. Appeal No.763 of 2017 decided on 27.04.2017.

He further contends that otherwise also, specific injuries have not been attributed to the petitioners. Only kick and fist blows were inflicted upon the deceased by the assailants. He further states that as per statement recorded under Section 161 Cr.P.C., there are contradiction in the statements of complainant/respondent No.2 and injured eye witness Raju @ Sonu qua the role of the petitioners. Thus, the impugned order is absolutely against facts and deserves to be set aside.

I have heard learned counsel for the petitioner and gone through the case file.

A perusal of the record would reveal that the petitioners have been specifically named in the FIR as well as in the statement of complainant/injured Naveen, who appeared in the witness box as PW-2. As per FIR, the petitioners have inflicted fist and kick blows on the deceased while co-accused Rahul caused knife injuries to the deceased. The version in the FIR was also re-iterated by eye-witness/injured Raju in his statement under Section 161 Cr.P.C. There are as many as 10 injuries on the person of the deceased and injured Raju has also suffered 3 injuries.

In the instant case, there is sufficient evidence on record indicating the role of the petitioner in the alleged crime, therefore, this Court feels that the prima facie satisfaction reached by the trial Court for summoning the accused does not suffer from any perversity. In fact, learned trial Court has considered the relevant material and after proper analysis, has passed a well reasoned order. This Court reiterates the same.

The ratio of the reported case is distinguishable on facts, as in the instant case as discussed above. There is ample reliable evidence on record to connect the petitioners with the alleged offence at this stage.

This Court feels that the exoneration of the petitioners by the police after conducting further investigation under Section 173(8) Cr.P.C., would not override the prima facie satisfaction recorded by learned Additional Sessions Judge.

As far as the power of the Court, with regard to summoning of a person against whom challan is not filed, is concerned, it has been settled by Hon'ble the apex Court in **Hardeep Singh Vs. State of Punjab, 2014 (3) SCC 92** in the following terms:-

*100. In Joginder Singh and another Vs. State of Punjab & Anr., AIR 1979 SC 339, a three-Judge Bench of this Court held that as regards the contention that the phrase “any person not being the accused” occurring in Section 319 Cr.P.C excludes from its operation an accused who has been released by the police under Section 169 Cr.P.C. and has been shown in column 2 of the charge-sheet, the contention has merely to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319 (1) Cr.P.C clearly shows that even person **who have been dropped by the police during investigation** against whom evidence showing their involvement in the offence comes before the criminal court are included in the said expression. (emphasis supplied)*

101 In Anju Chaudhary Vs. State of U.P and another, 2013 (1) R.C.R.(Criminal) 686:2013(1) Recent Apex judgments (R.A.J.) 46: (2013)6 SCC 384, a two Judge Bench of this Court held that even in the cases where report under Section 173(2) Cr.P.C is filed in the court and investigation records the name of a person in Column 2, or even does not name the person as an accused at all,, the court in exercise of its powers vested under Section 319 Cr.P.C can summon the person as an accused and even at that stage of summoning, no hearing

is contemplated under the law.

102. In Suman Vs.State of Rajasthan & Anr., 2009(4) R.C.R.(Criminal) 908: 2009(6) Recent Apex Judgements (R.A.J) 365, a two Judge Bench of this Court observed that there is nothing in the language of this sub-section from which it can be inferred that a person who is named in the FIR or complaint, but against whom charge-sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence, the court finds that such person has committed an offence for which he could be tried together with the other accused. In Lal Suraj (supra), a two-Judge Bench held that there is no dispute with the legal proposition that even if a person had not been charge-sheeted, he may come within the purview of the description of such a person as contained in Section 319 Cr.P.C. A similar view had been taken in Lok Ram (supra) wherein it was held that a person, though had initially be named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.”

At this stage, it cannot be said that the findings recorded by learned Court below suffers from any illegality or perversity.

Consequently, the revision petition stands dismissed. However, anything said hereinabove shall not be construed an expression on the merits of the case. The observation recorded by this Court is only for the disposal of the present petition.

(JITENDRA CHAUHAN)
JUDGE

May 25, 2017

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No