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

CRR-2502-2017 (O&M)
Date of Decision: 21.07.2017

Mahender Singh

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. P.R.Yadav, Advocate,
for the applicant-petitioner.

SUDIP AHLUWALIA J. (ORAL)

CRM-22465-2017

Allowed as prayed for.

Annexures P-1 to P-8 are taken on record.

CRR-2502-2017 (O&M)

This Revisional Application is directed against the impugned order dated 23.05.2017 passed by the Ld. Additional Sessions Judge, Gurgaon in the Sessions Trial arising out of FIR No.315 dated 15.06.2015 under Sections 323, 325 & 506 of the IPC registered at Police Station DLF Phase-II, Gurgaon.

2. It transpires that prior to the aforesaid FIR, another FIR bearing No.313 dated 14.06.2015 was lodged on behalf of accused No.1 in the pending trial against the Complainants' side. Thereafter, the trial is being conducted jointly in relation to both the FIRs.

3. Vide the impugned order, the Ld. Additional Sessions Judge was pleased to partially allow an application under Section 319 of the Code of Criminal Procedure (in short 'Cr.P.C.') filed on behalf of the complainant in the concerned FIR through the State, who had sought for summoning the present petitioner and another person, namely, Rohit, as additional accused persons in the case. His contention before the Ld. Court below was that the names of all the culprits including those two sought to be summoned vide the impugned petition, had been mentioned in the original FIR, but the same were motivatedly deleted by the Investigating Officer while sending up the challan.

4. The Ld. Court, thereafter, on going through the evidence transpiring against the petitioner, allowed the application partially inasmuch as summons against the present petitioner were ordered to be issued, while the prayer in relation to the proposed accused Rohit was rejected for lack of sufficient evidence warranting his summoning.

5. The contention of Ld. counsel appearing for the present petitioner is three-fold. It is first of all argued while relying upon the decision of the Apex Court in “**Michael Machado and another Vs. Central Bureau of Investigation and another**” 2000 (2) R.C.R. (Criminal) 75, that the power under Section 319 Cr.P.C. is supposed to be resorted to very sparingly and not as a matter of course; and that “*Unless the Court is hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction of the offence concerned we would say that the Court should refrain from adopting such a course of action*”.

6. The second contention raised is that in the present scenario, the old approach of distrusting the result of investigation conducted by an

Investigating Officer needs to be discarded as archaic, as observed by the Hon'ble Supreme Court in “State Govt. of NCT of Delhi Vs. Sunil” 2001 (1) R.C.R. (Criminal) 56, which reads thus -

“21. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during British period and policemen also knew about it. Its hang over persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.”

(Emphasis added)

7. The third submission raised is that the Ld. trial Court ought to have considered the probability of involvement of the petitioner and his resultant chance of conviction or otherwise in the trial by comparing the same with rest of the evidence on record which is apparently contradictory to the statements relied upon for the purpose of allowing the prayer. It is the further submission that the Ld. Court also ought to have been conscious of the allegations made on behalf of the accuseds' side in their own FIR No.313 in order to assess the credibility of the complainant's statements.

8. In view of the aforesaid submissions, we may now advert to the relevant statements which the Ld. Court below had considered sufficient to invoke the power under Section 319 Cr.P.C. for the purpose of summoning the present petitioner. Those happen to be -

“On seeing me, accused Shiv Charan exhorted that this old man (budha) has come and he shall be done to death today. Upon hearing this lalkara accused Mahender took out his weapon and opened fire upon me in order to kill me. The bullet fortunately missed and I luckily survived. All of them had surrounded me and started causing injuries with dandas and kick blows. I resultantly fell on the ground. Accused Yogesh gave a knife blow on my back and accused Deepak gave danda blow on the leg and body. Accused Deepak also gave danda blow on my right hand and resultantly my finger was lacerated and it started bleeding profusely.”

(Emphasis added)

9. It is, thus, seen that there is a direct statement against the accused Mahender of having taken out his weapon and opening fire upon the witness, the bullet of which, however, allegedly and luckily missed him.

If this statement was to go unrebutted and unchallenged, it cannot be said

that the chances of the culprit being convicted would be altogether nil. But of course, the same would have to be considered in the light of rest of the evidence and contradictions which might be pointed out to the Ld. Trial Court. The same, therefore, certainly appears to meet up the standard laid down by the Hon'ble Supreme Court in the case of "Hardeep Singh Vs. State of Punjab and others" 2014 (1) R.C.R. (Criminal) 623, which reads as follows:-

"98. Power under Section 319 Cr.P.C. is a discretionary and an extra- ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

99. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person

could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

(Emphasis added)

10. Even otherwise, it is well-settled that for the purpose of deciding an application midway during Trial, the Court cannot conduct a 'Mini Trial' to decide the relative merits of the evidence relied upon and its alleged contradictions with rest of the material on record, which essentially ought to be considered only after completion of all the evidences.

11. It has, in any case, transpired from the statement of PW-7 on record, who was the SHO of the Police Station at the relevant time, that it was, he who had found that the accused Mahender and Rohit were not present at the time of incident as alleged on account of which he had directed the Investigating Officer to delete their names from the case. It, therefore, follows that not including the names of these persons was done by the Investigating Officer on the instructions of the SHO but not on account of his own direct investigation. At any rate, the result of investigation conducted by any Police Officer cannot be taken to be as sacrosanct as the actual statements made on oath, because necessarily the material collected during the investigation is never from the direct or personal knowledge of the Police Officer.

12. For the aforesaid reasons, this Court finds no merit in the present revision petition which is, accordingly, dismissed. The impugned order is sustained but with a direction that after appearance of the present petitioner before the Ld. trial Court, the witnesses already examined can be recalled only for the purpose of cross-examination from his side and shall not be permitted to lead any further evidence from the prosecution in their

examination-in-chief. It is further directed that the Ld. Court below shall proceed on to conclude the trial on merits, without, in any manner, being influenced by any of the observations made in this order.

21.07.2017

Bhumika

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes
2. Whether reportable: No