

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

CRR No.3796 of 2017.
Decided on:-12.10.2017.

Vishwa Mittar.

.....Petitioner.

Versus

State of Haryana and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Shranav Katyal, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present criminal revision against the order dated 19.09.2017 passed by learned Additional Sessions Judge, Fatehabad, whereby the application moved by the prosecution under Section 319 Cr.PC seeking summoning of respondent No.2 Balbir Singh, was dismissed.

Briefly stated, FIR No.197 dated 31.05.2016 under Sections 148, 149, 323, 325, 506 and 307 IPC as well as Sections 25 and 27 of the Arms Act, 1959 was registered at Police Station Bhuna, District Fatehabad at the instance of injured-complainant (petitioner herein).

As per the FIR, on 31.05.2016 at about 08.00 A.M., when the petitioner-complainant along with his son Vinod @ Manoj, brother Subhash and nephew Sudhir was repairing water pipeline in their fields, accused

namely, Surender son of Bhajan Lal and his sons Satish, Sumit and Sachin as well as Parveen and Vikas sons of Balbir, Sanjay and Ajay sons of Om Parkash came to their fields in a car, motorcycle and Sonalika tractor. The car of the complainant was already parked on the bridge of Rajwaha. The accused shouted at the complainant to remove his car standing in the way. After alighting from their vehicles, accused Sachin @ Tony and Parveen fired shots in the air and in prosecution of their common object to kill the complainant, the accused had attacked the complainant party with their weapons. While accused Surender gave a Lathi blow on the shoulder and right knee of the complainant, accused Ajay gave a Lathi blow on the head and other parts of the body of complainant. Thereafter, accused Parveen said that they will kill the complainant and he fired on the head of Vinod @ Manoj son of the complainant. Accused Sachin @ Tony also fired a pistol shot, which hit on the left side of the chest of Sudhir. Accused Surender gave a Lathi blow on the head of Subhash. Accused Satish @ Asharam gave Lathi blows on the hand and other parts of the body of Subhash. Thus, all the accused gave beatings to the complainant party with their respective weapons with intention to kill them. The complainant party also gave injuries to the accused in their defence. On hearing hue and cry, Pardeep, who is nephew of complainant came on the spot. Noticing Pradeep, all the accused ran away from the spot with their respective weapons and in the process of fleeing away, they also threatened to kill the complainant party. The complainant became unconscious because of fire arm injury on his chest. Pardeep arranged for a vehicle and took the complainant and other injured persons to General Hospital, Fatehabad, where they were treated.

The police conducted investigation and submitted the Challan. However, no Challan was presented against accused Sanjay and respondent No.2-accused Balbir Singh. An application under Section 319 Cr.PC was filed by the prosecution with an averment that names of respondent No.2 along with co-accused Sanjay son of Om Parkash were mentioned in the FIR. Statements under Section 161 Cr.P.C. of injured-witnesses were also recorded, wherein both these accused have also been attributed specific roles, but still the police has not challaned them. The petitioner-complainant, while appearing in the witness box as PW1 has stated that respondent No.2 Balbir son of Bhajan Lal and his two sons Parveen and Vikas along with other co-accused came in their fields on motorcycle, car and Sonalika tractor and all of them raised a Lalkara that the complainant should remove his car from the way. Since the name of accused Balbir was not there in the FIR, the prosecution filed an application under Section 319 Cr.PC summoning of respondent No.2 and co-accused Sanjay son of Om Parkash.

The said application was partly allowed by learned Additional Sessions Judge, Fatehabad vide order dated 19.09.2017 on the ground that despite the petitioner being the complainant and author of the FIR and has specifically named the accused persons, but there is no reference about respondent No.2 Balbir Singh. However, accused Sanjay son of Om Parkash was ordered to be summoned as an additional accused.

It is in these circumstances, the petitioner-complainant has filed present revision petition seeking summoning of respondent No.2 Balbir Singh.

Mr. Anmol Rattan Sidhu, learned senior Advocate for the

petitioner-complainant has argued that witness Sudhir in his statement under Section 161 Cr.P.C. dated 07.06.2017 has specifically named respondent No.2 Balbir Singh along with accused Sachin. This witness has also stated that on 07.06.2017, respondent No.2 Balbir Singh had given a Danda blow on the head of Manoj son of the petitioner-complainant and Manoj was referred to hospital for treatment. Therefore, a specific role has been attributed to respondent No.2.

He has further contended that the power of the Court for summoning of a person, though not named in the FIR, but subsequently arrayed as an accused, has elaborately been discussed in ***Hardeep Singh Versus State of Punjab (2014) 3 SCC 92***. He has prayed for setting aside of the impugned order passed by the Court below and has sought summoning of respondent No.2 in the case.

I have heard learned senior counsel for the petitioner and perused the paper book.

No doubt, Section 319 Cr.PC provides that 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.

However, at the same time, no person on an application under Section 319 Cr.PC can be summoned as an additional accused merely on the basis of statement of the complainant recorded in the Court unless there is material to summon. In order to summon an accused, some “fresh evidence” must have come on record so as to impel the Court to summon such person as

an additional accused.

In the present case, the parties are closely known to each other. The petitioner is author of the FIR. He has named number of persons as accused including the son of respondent No.2 Balbir Singh, but in the whole FIR, there is no allegation against respondent No.2 Balbir Singh. It is only when the petitioner-complainant has appeared in the witness box as PW1, he has deposed about the involvement of respondent No.2 along with other co-accused including accused Sanjay son of Om Parkash (accused Sanjay was named in the FIR). The accused were assigned their respective roles in the FIR, but there is no allegation in the FIR that respondent No.2 Balbir Singh was present at the scene of occurrence. The petitioner-complainant has not explained that when he can name even the son of respondent No.2 in the FIR, who dissuaded him from naming the respondent No.2. Even during the investigation conducted by the police, respondent No.2 Balbir Singh was found innocent.

Hon'ble Supreme Court in ***Pepsi Foods Limited and another Versus Special Judicial Magistrate and others-(1998) 5 Supreme Court Cases 749*** has held as under:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and

would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

In ***Hardeep Singh’s case (supra)***, it has been held by the Apex Court that the degree of satisfaction for invoking Section 319 Cr.P.C. should be of more than a prima-facie case, as exercised at the time of framing of charge, but short of satisfaction to an extent that evidence, if not rebutted, may lead to conviction of the person sought to be added as accused.

Therefore, having applied the judgments of Hon’ble Supreme Court in ***Pepsi Foods Limited and another’s case (supra)*** and ***Hardeep Singh’s case (supra)*** and noticing the fact that the parties are closely known to each other and even the presence of respondent No.2 at the scene of occurrence has not been mentioned by the complainant in the FIR, this Court finds that no interference is warranted.

Accordingly, the impugned order dated 19.09.2017 passed by learned Additional Sessions Judge, Fatehabad is affirmed and the present petition, being devoid of any merit, is dismissed.

October 12, 2017

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No