

Sr. No.204

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

CRR No.2429 of 2018(O&M)

Date of decision:06.07.2018

Hari Singh(deceased) through LRs

.....Petitioner

versus

State of Haryana and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Pawan Kumar, Sr. Advocate with
Mr. Rohit Kumar, Advocate
for the petitioner.

Mr. Vikas Malik, DAG Haryana.

Mr. J.S.Bedi, Sr. Advocate with
Mr. Sunil Sihag, Advocate
for respondents No. 2 and 3.

Rajbir Sehrawat, J(Oral)

Present petition has been filed by the complainant challenging the Order dated 04.03.2015(Annexure P-8); whereby the application moved by the petitioner under Section 319 Cr.P.C for summoning the respondents No. 2 and 3 as additional accused, for facing the trial in FIR No.239 dated 09.07.2010 for the offences punishable under Sections 148, 323, 307, 506, 149 IPC, Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Section 25 of Arms Act, registered at Police Station Hathin, District Palwal, was dismissed.

Although originally the petition was filed under Section 482 Cr.P.C. for invoking inherent powers of this Court, however, at the time of argument, learned counsel for the petitioner submitted that since the

impugned order is revisable order, therefore, the present petition may be treated as Criminal Revision against the impugned order.

Learned counsel for the respondent have no objection if the same is treated as a criminal revision.

Accordingly, the present petition is treated as Criminal Revision petition against the Order impugned in the present petition.

Registry is directed to number the petition accordingly.

Brief facts of this case are that the above mentioned FIR was registered on the complaint of Daya Chand wherein he had prayed for taking action against Mahender Singh son of Radhey Shyam, Rameshwar son of Udyam, Arun son of Bijender, Gainu son of Har Chanda, Dev Parkash son of Rattan Lal, all residents of village Nangal Jat, Tehsil Hathin, District Palwal. It was claimed in the FIR that on 06.06.2010, he was present at his home after casting the vote in the election of Sarpanch. Then the above said persons came to his house with lathis and dandas and caused injuries. Thereupon the above said FIR was registered.

Although in the FIR, the name of the respondents No. 2 and 3 were not mentioned, however, in the statement under Section 161 Cr.P.C recorded after about more than one month, Hari Singh, the petitioner herein, had made a statement that he was given gun shot injury by Kehar Singh and similarly allegations were also made in the supplementary statement against the other respondent Gyan Chand.

During the investigation, the Police did not find any substance in the allegations levelled against respondents No. 2 and 3 Kehar Singh and Gyan Chand. Therefore, no challan was presented against them; treating them to be not involved in the incident. The challan was presented against

the remaining accused. Thereafter the statements of some prosecution witnesses were recorded by the Trial Court. Then the application was made under Section 319 Cr.P.C by Hari Singh for summoning of Kehar Singh and Gyan Chand to face the trial alongwith the other accused; on the ground that there is sufficient material against these persons to be summoned as an accused.

This application filed by Hari Singh was contested by the respondents on the ground that the application was not maintainable. It was further pleaded that the Court is not required to pass an order summoning the respondents just on asking of the applicant. The power under Section 319 Cr.P.C is required to be exercised sparingly and only when the Trial Court is satisfied that there is clinching evidence to support such summoning. The reply further states that there is no material on record to warrant the summoning of the respondents.

Having heard the learned counsel for the parties, the Trial Court dismissed the above said application. While dismissing the application the Trial Court observed that in the initial version given in the FIR, the complainant has not even mentioned the name of accused Kehar Singh and Gyan Chand as participants in the crime. Even six witnesses have been examined in the case, including material witnesses PW-2 Daya Chand, PW-3 Bhedan, PW-5 Digambar and PW-6 Hari Singh. However, out of these witnesses; except Hari Singh, the applicant, none of the remaining witnesses have pointed any finger at the respondents, Kehar Singh and Gyan Chand. Only in the statement of Hari Singh, PW-6 it has been mentioned that respondent Kehar Singh fired upon this witness. However, the remaining witnesses have denied that any incident of firing had even taken

place. Therefore, the Trial Court held that there was no sufficient material to summon the respondents No. 2 and 3, as an accused to face the trial along with the other co-accused. Challenging this Order passed by the Trial Court, the present petition has been filed.

While arguing the present petition, learned Senior counsel appearing on behalf of the petitioner has submitted that mere fact that the accused was declared as innocent by the Police, was no ground to dismiss the application. It is further submitted that even the final investigation report filed by the Police in this case was not free from blemish. Infact, the earlier investigating officer had filed an affidavit during the proceedings of the anticipatory bail, filed by the respondents, submitting therein that the respondents were involved in the incident. However, thereafter the investigating officer of the case was changed and the respondents No. 2 & 3 were absolved from the liability in this crime. Learned counsel further submits that the injured witness has deposed before the Court; while appearing as a prosecution witness, that it was Kehar Singh who had caused gun shot injuries to him. Even the MLR of this injured witness is placed on record to contend that there are injuries on the persons of this witness. Therefore, learned counsel submits that there is sufficient material on record. Hence, the application should have been allowed and the respondents should have been summoned by the Trial Court.

On the other hand, learned Senior counsel for the respondents submitted that admittedly, the names of the respondents were not mentioned in the original version given in the FIR. The names of the respondents were included only after wife of Kehar Singh was elected as Sarpanch of the village in the election. Therefore, after more than one month of the incident

and recording of the FIR, only on the statement of Hari Singh, the respondent Kehar Singh was named as an accused. It is submitted that the falsity of the version of Hari Singh is clarified by the fact that although he was declared fit to make the statement even earlier and was, admittedly, discharged from the hospital on 4th day, despite that he did not make the statement before the police immediately. He gave his version in his statement under Section 161 Cr.P.C., after due deliberation and manipulation of the facts, and by this manipulation, the names of the respondents were wrongly included by him. Learned counsel further submits that even before the trial court six witnesses have already been examined. However, except the petitioner, none of them have named the respondents as the assailants. Therefore, as per the evidence on the file of the Trial Court, there is no evidence warranting summoning of the respondents under Section 319 Cr.P.C.

Having heard the learned Senior counsels for the parties and perusing the record, this Court does not find any infirmity or illegality in the Order passed by the Trial Court. Admittedly, the respondents were not named in the FIR and the Police had not filed a report under Section 173 Cr.P.C against them, arraying them as accused. Although, learned counsel for the petitioner is right in arguing that this fact itself could not have been a ground for rejecting the application filed under Section 319 Cr.P.C. however, a perusal of the Order shows that this is not even the main ground given by the Trial Court for declining the application in the present case.

The Hon'ble Supreme Court in the case of ***Hardeep Singh vs. State of Punjab and others; 2014(3)SCC 92*** have categorically laid down the test to be applied for appreciating whether a person is to be summoned

under Section 319 Cr.P.C or not. The test laid down by the Hon'ble Supreme Court is given below:-

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 unrebutted, 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."

Therefore, it is clear that for considering whether a person should be summoned under Section 319 Cr.P.C or not, the Trial Court is required to assess the evidence by applying the test of existence of prima facie case of the degree of more than what is required for framing a charge against the accused but less than the degree of satisfaction of the Court which is required to convict a person. Hence the present case has to be considered in view of this test laid down by the Hon'ble Supreme Court.

Applying this test to the facts of the present case, this Court does not find any irregularity or perversity in the satisfaction arrived at by the Court in not summoning the respondents as accused. The argument of learned Senior counsel that the final investigation report was manipulated by change of the investigating officer and therefore, respondents were wrongly absolved by the police; is irrelevant in context of the present case. Admittedly, the petitioner had made statement under Section 161 Cr.P.C in which he had named the respondent Kehar Singh specifically; as the person having caused gun shot injury. After a long time thereafter, six prosecution witnesses have been examined before the Trial Court. However, none of them have supported the version given by the petitioner Hari Singh. Even if the investigating officer had manipulated the investigation, as submitted by learned counsel for the petitioner, there was nothing to stop these witnesses of prosecution to depose before Trial Court in line with the version given by Hari Singh in his statement under Section 161 Cr.P.C. However, despite that none of the witnesses examined by the prosecution, except the petitioner Hari Singh himself, has named the respondents nor attributed any role to either of them. Although one of these witnesses have stated before the Court that Hari Singh had suffered injuries, however, he has also not named the respondents as the person who caused these injuries. More-over the version given by the petitioner in his statement is at variance with the version given by other witnesses, even qua involvement of any gun fire shot, as claimed by the petitioner.

In view of the above evidence, if the Trial Court has not felt satisfied to such an extent; as to summon the respondents as accused to face the trial along with other co-accused; then no fault could be found with the

satisfaction of the Trial Court. There is no perversity in the conclusion of the trial court or qua the relevance of the material considered by the Trial Court. In absence of any perversity involved in the decision of the Trial Court, it is the satisfaction of the Trial Court which is to prevail. Hence, no interference by this Court is called for .

In view of the above, the present revision petition is dismissed.

6th July, 2018
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes*
Whether Reportable *Yes*