

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

**1. CRM-M-21423 of 2015 (O&M)
Date of Decision: 16.05.2018**

Ram Swaroop

....Petitioner

VERSUS

State of Haryana and others

....Respondent

2. CRR No. 1818 of 2016 (O&M)

Ram Swaroop

....Petitioner

VERSUS

State of Haryana and others

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Aditya Sanghi, Advocate
for the petitioner in both the petitions.

Mr. Deepak Grewal, DAG, Haryana.

Mr. L.S. Mann, Advocate
for respondents no. 2 and 3 in CRM-M-21423-2015 and
for respondents no. 2 to 5 in CRR-1818-2016

SURINDER GUPTA, J.

CRM-M-21423-2015

This petition has been filed by petitioner-Ram Swaroop under Section 482 Cr.P.C. challenging order dated 15.05.2015 passed by trial Court whereby application of complainant-petitioner to lead additional evidence under Section 311 Cr.P.C. to examine Dashrath, Diwan Singh and Subhash as eye-witnesses of the prosecution, was declined.

2. At the time of issuance of notice of motion, learned counsel for petitioner has confined his submission for examination of Dashrath son of Jagdish as eye-witness of the prosecution and did not press for permission to

examine other two witnesses, namely, Diwan Singh and Subhash.

3. Before considering the application, it will be relevant to have a brief note of facts of the case. FIR No. 150 dated 16.06.2013, was registered on the statement of Ram Swaroop, wherein he alleged that on that day Ishar Ram, his father, had gone to his field at about 08.00 a.m. His brother Jagdish had gone to field at about 09.00/10.00 a.m. with meals while complainant had gone there at 11.30 a.m. They could not trace their father. Slippers and cycle of his father were found in the passage by the side of field of Hazari Godara. Dashrath son of Jagdish took the cycle and slippers of his grandfather to other field. Thereafter, complainant and his brother Jagdish tried to search for his father but could not trace him. They got recorded FIR with apprehension that his father had been killed by Mahinder, Krishan and Om Parkash son of Dula Ram, Hira Lal son of Mahinder, Hanuman son of Krishan.

4. During investigation dead body of Ishar Ram was taken out from the field and accused Mahinder was arrested. Supplementary challan against accused Om Parkash was also presented. After framing of charge, prosecution concluded its evidence. At this stage, complainant came up with this application under Section 311 Cr.P.C. seeking permission to examine Dashrath son of Jagdish, Diwan Singh and Subhash as prosecution witnesses, which was dismissed by the trial Court.

5. Confining his submission for permission to examine Dashrath nephew of complainant as prosecution witness, learned counsel for the petitioner has argued that he is material witness as he had seen Krishan and Hira Lal carrying something followed by Hanuman, Om Parkash and Mainder carrying *gandasi* and *lathies*. While appearing as PW-1 complainant

Dashrath will help trial Court in reaching just and fair conclusion about complicity of accused in this case.

6. On perusal of paper-book, FIR in this case and statements of witnesses, I find no substance in the submission of learned counsel for the petitioner. It appears that attempt has been made to convert this case, which is based on circumstantial evidence, as eye-witness account case. As per allegations in the FIR, Dashrath had come to the spot and taken cycle and slippers of Ishar Ram, his grandfather to other field. He was never cited as eye-witness of the occurrence. It was in the statement of complainant he disclosed that his nephew Dashrath had seen Krishan and Hira Lal carrying “something” followed by Hanuman, Om Parkash and Mahinder carrying *lathies* and *kassi*. This statement was recorded on 16.09.2014 i.e. after 15 months of the occurrence. Neither complainant-Ram Swaroop nor any other eye-witness including Jagdish had stated to police in their statements that Dashrath had seen Krishan, Hira Lal carrying “something” followed by Hanuman, Om Parkash and Mahinder. In the application filed by petitioner, he has given altogether a different version regarding testimony of Dashrath. Para 3 of the application is reproduced as follows:-

“3. That Dashrath son of the complainant had gone to the fields and had seen the five accused namely Mahinder, Krishan, Om Parkash, Hanuman and Heera going together. Krishan and Heera were carrying the deceased and other three were carrying gandasi and lathis.”

7. Keeping in view facts of the case, trial Court has rightly observed that “had Dashrath seen accused Krishan and Hira Lal, carrying deceased followed by other accused namely Hanuman, Om Parkash and Mahinder carrying lathies and gandasis”, this fact might have been disclosed

to the police in the statement of witnesses recorded by it. In its reply filed by State, the version about statement of Dashrath as sought to be put forth has been found to be an after thought version.

8. Keeping in view above facts I am of the considered view that trial Court has taken note of the intention of complainant party to introduce Dashrath as eye-witness of this case while facts and circumstances of the case and statements of witnesses recorded by the police nowhere suggest that he was an eye-witness. Dashrath is none other than grandson of the deceased and it cannot be believed that if he had seen the accused carrying dead body of his grandfather or “something” he would not have disclosed this fact to his parents or uncle immediately after the occurrence.

9. In view above facts, I find no merit in this petition and the same is dismissed.

CRR-1818-2016 (O&M)

10. This is revision against order dated 03.05.2016 passed by the trial Court whereby application filed by complainant-petitioner under Section 319 Cr.P.C. to summon Krishan and Om Parkash sons of Dulla Ram, Hanuman son of Krishan and Hira Lal son of Mahinder as accused to face trial alongwith other accused, was dismissed.

11. Against accused Om Parkash the police has presented the supplementary challan as such this application no more survives against him. The complainant has alleged that the police had not investigated the matter properly. Dashrath nephew of complainant had seen persons named in the application and accused Mahinder carrying “something” from a distance when he came to the field. Jagdish brother of petitioner had also seen accused standing in the field and digging a pit, putting something in that pit and then

investigation. The police has also not recorded statement of Subhash and Loona Ram regarding extra judicial confession of all the five accused whereby they confessed murder of Ishar Ram, father of petitioner. From statements of Loona Ram, Ram Swaroop and Jagdish *prima facie* case is disclosed regarding involvement of all the five accused in the murder of Ishar Ram and for their joint trial with other two accused, namely, Mahinder and Om Parkash.

12. Trial Court dismissed this application with the observation that there is no iota of evidence on file to show as to how accused sought to be summoned have committed the offence. No recovery was effected from them. PW-1 Loona Ram belongs to other village and has not disclosed presence of other accused person at the place of incident in his statement under Section 161 Cr.P.C. Field from where the dead body of Ishar Ram, father of petitioner was recovered, was owned and possessed by accused Mahinder. From the statement of PW-9 Ram Swaroop, PW-10 Jagdish and PW-1 Loona Ram, learned trial Court did not find any material on record to summon the accused.

13. Learned counsel for the petitioner has mainly relied on statement of PW-1 Loona Ram that accused made extra-judicial confession before him about murder of Ishar Ram on 19.06.2013. However, he has admitted that in statement of Loona Ram recorded by police on 19.06.2013 this fact does not find mention that accused Om Parkash, Hira Lal, Hanuman and Krishan made any extra-judicial confession before him.

14. While exercising powers under Section 319 Cr.P.C. the Court should exercise judicial discretion on a consideration of totality of facts and circumstances of a given case and more circumspection is required from the

power and should be used by the Court very sparingly thereby ensuring that principles of rule of law and basic tenets of criminal law and jurisprudence are not vitiated.

15. In this case accused Om Parkash and Mahinder, who were facing trial, are the sons of brother of deceased. Hanuman, Hira Lal and Krishan, who are sought to be summoned are their relatives. PW-1 Loona Ram is none other than son-in-law of the deceased. In his statement recorded by police on 19.06.2013 this fact nowhere finds mention that on that day all the five accused had come to him and confessed their guilt. Complainant or this witness have not represented to higher authorities of police that statement of Loona Ram was not rightly recorded. Complainant has tried to make this case, which is based on circumstantial evidence, as eye-witness account case by attempting to introduce Dashrath and Diwan Singh as eye-witnesses of the case and citing Loona Ram (PW) as witness of extra-judicial confession of accused, Hira Lal, Hanuman and Krishan. During investigation by the police, persons sought to be summoned were found innocent. Investigation of the case was also conducted by police officer of the rank of Deputy Superintendent of Police, which was verified by ASP Sirsa, wherein also aforesaid accused were not found involved in the incident and due to this reason challan against them was not presented in Court. The application under Section 319 Cr.P.C. was moved by the complainant when the evidence of prosecution had already been concluded, statement of accused under Section 313 Cr.P.C. had been recorded and the case was ripe for disposal. Keeping in view all these facts and circumstances, I find that trial Court has rightly exercised its power while declining the application filed by petitioner-Ram Swaroop under Section 319 Cr.P.C.

order dated 18.05.2016 passed in CRM-M-21423-2015, directing trial Court to adjourn the matter for pronouncement of judgment after 19.07.2016 is vacated and trial Court is directed to proceed with the trial. Necessary direction in this regard be conveyed to trial Court.

May 16, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No