

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-38443 of 2017

Parveen Kansal @ Rocky

.....Petitioner

versus

State of Punjab

.....Respondent

Crl. Misc. No. M-43479 of 2017

Happy Bansal

.....Petitioner

versus

State of Punjab

.....Respondent

Date of Decision: September 11, 2018

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Karan Pathak, Advocate
for the petitioner (in CRM-M-38443-2017)

Mr. J.K. Singla, Advocate
for the petitioner (in CRM-M-43479-2017)

Mr. Kirat Singh Sidhu, DAG Punjab

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Sudhir Mittal, J. (Oral)

This judgment will dispose of CRM-M-38443-2017 and CRM-M-43479-2017, as both of them arise out of the same order dated 03.03.2017 passed by the learned Sub Divisional Judicial Magistrate, Phul and revisions filed against the same were rejected vide judgment dated 21.09.2017 by the Additional Sessions Judge, Bathinda.

2. FIR No. 33 dated 04.05.2014 came to be registered at Police Station City Rampura under Sections 307, 452, 323, 326, 148, 149, 506-II IPC on the complaint of one Rakesh Kumar, who allegedly worked as a Commission Agent in

accused came to his shop on 04.05.2014. The petitioner raised lalkara and the co-accused assaulted the complainant. Thereafter, on 09.05.2014, statement of brother of the complainant was recorded in which he improved the version by stating that Happy Bansal (petitioner in CRM-M-43479-2017) was armed with a Revolver.

3. A Special Investigation Team was constituted to investigate this FIR. Vide report dated 22.05.2014, it was found that the petitioner namely Parveen Kansal @ Rocky was present in Zirakpur on the date of the incident and Happy Bansal was present at Durga Mandir. Challan was presented and thereafter the prosecution preferred an application under Section 319 Cr.P.C. for summoning the petitioners as well, which was allowed by the trial Court vide order dated 03.03.2017 and revision of the petitioner was rejected vide judgment dated 21.09.2017.

4. Learned counsel for the petitioner(s) submits that while summoning an additional accused under Section 319 Cr.P.C., the trial Court has to be satisfied on the basis of evidence on record that more than a *prima facie* case exist against the additional accused. The satisfaction recorded may not be sufficient to convict the additional accused but it should be more than a *prima facie* case against the said person. He relies upon judgment of the Hon'ble Supreme Court in **Hardeep Singh vs. State of Punjab and others, 2014(3) SCC 92**. In the instant case, his submission is that the Courts below have fallen in error as they have merely relied upon the statement of PW-1 (complainant), who has reiterated the statement made before the police.

5. Learned counsel for the complainant submits that vide order dated 21.09.2017, learned Additional Sessions Judge, Bathinda had sent the case back for trial by a Magistrate as according to him Section 307 IPC was not made out and directions had been given to frame the charge against accused under Section 452,

challenged and, thus, his submission is that the charge having been directed to be framed, the challenge to an order passed under Section 319 Cr.P.C. has been rendered infructuous. Moreover, the petitioner has not brought this order to the notice of this Court and, thus, the petitioner is guilty of suppressing the facts. Next submission made by him is that the Court was not bound to take into consideration the report of the investigation team as the said report is evidence and is to be looked into only after the charge had been framed and the trial has commenced.

6. The Supreme Court of India in *Hardeep Singh's case (supra)* has settled the law regarding summoning of additional accused under Section 319 Cr.P.C. While deciding such an application, the trial Court is bound to look into the evidence on record as on the date of the application including the investigation done by the prosecution. Thus, the trial Court should have taken into consideration the report of the SIT dated 22.05.2014. The satisfaction to be recorded while summoning an additional accused under Section 319 Cr.P.C. is required to be more than a *prima facie* case and had the trial Court taken into consideration the report of the SIT dated 22.05.2014, it could not have come to the conclusion that it has reached in the instant case. Regarding argument of concealment of material facts, learned counsel for the complainant does not dispute that infact charges have not been framed after passing of the order dated 21.09.2017 referred to by him. Thus, the existence of the said order does not affect the continuation of the present revision petitions.

7. In view of the above, the petitions are allowed and the impugned order dated 03.03.2017 and judgment dated 21.09.2017 passed by the Courts below are quashed.

September 11, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No