

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-45583 of 2017

DATE OF DECISION: DECEMBER 6, 2018

SURJIT SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB & ANOHTER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. R.S. RANDHAWA, ADVOCATE FOR THE PETITIONER.
MR. RAMDEEP PARTAP SINGH, DAG, PUNJAB.
MR. D.S. MATYA, ADVOCATE FOR RESPONDENT NO.2.

MANOJ BAJAJ, J.(ORAL)

Petitioner Surjit Singh has challenged the order dated 27.09.2017, whereby the trial Court has proceeded to summon him as additional accused under Section 319 Cr.P.C.

The petition is filed under Section 482 Cr.P.C. Learned counsel appearing on behalf of the complainant-respondent No.2 raised an objection to the maintainability of the petition, as according to him the order passed under Section 319 Cr.P.C. is revisable.

At this stage, learned counsel for the petitioner makes a prayer to treat this petition as Criminal Revision. The prayer is accepted. The petition is treated as Criminal Revision.

On the basis of the statement made by complainant Amrik Singh (PW1), FIR No.33 dated 9.3.2015 under Section 302/427/148/149 IPC and Section 25/27/54/59 of Arms Act, Police Station Dehlon, District Ludhiana was registered. After investigation, a final report under Section 173(2)

Cr.P.C. was filed in Court whereby challan was submitted against Baljit Singh @ Lakha S/o Sikander Singh, that too, for the offence punishable under Section 304 IPC. Petitioner Surjit Singh @ Sita and another accused Satveer Singh S/o Surjit Singh were found innocent and were placed in Column No.2. After commencement of the trial, the complainant testified as PW1 before the Court and in his statement, narrated the participation of the present petitioner Surjit Singh as under:-

“Surjit Singh came there on his swift car bearing No.PB-10-CP-3695, carrying .32 bore revolver and Satveer Singh was carrying kirpan/sword and another unidentified persons were carrying sticks alongwith them. Baljit Singh raised lalkara that Naib we have come today, you would not escape from us unwounded today. In front of my eyes, Satveer Singh who carried a kirpan/sword attacked on Naib which hit him on the left hand's thumb, and his thumb was amputated. After this when I ran to rescue the Naib Singh, then Baljit Singh @ Lakha tried to run over the tractor upon me and we started shouting “Maarte Maarte”. Listening this, my cousin Harnek Singh, Pritam Singh son of Sucha Singh and Harbans Kaur wife of Pritam Singh, Balbir Kaur wife of Naib Singh rushed towards us from nearby Jogi Peer Place and Baljit Singh @ Lakha also tried to run over the tractor to all of them so that they cannot come to protect us. During this Baljit Singh hit his tractor with Gurdev Singh son of Bachan Singh who was coming on his bicycle after purchasing

milk who on hitting with tractor, died on the spot and due to this attempt of Lakha, Harbans Kaur wife of Pritam Singh got injuries and Gurdev Singh's cycle got broken. Surjit Singh then came out of his car and fired many shots from his 0.32 bore revolver and along with them unidentified persons attacked with sticks at Naib and all of us. When people of the village come at the place of occurrence, all of them ran away from the spot along with the their weapons threatening us but had left their vehicles on the spot.”

After the aforesaid evidence, an application was moved under Section 319 Cr.P.C. to summon petitioner Surjit Singh and Satveer Singh as additional accused. The trial Court allowed the application by summoning the petitioner as an additional accused, as the evidence had emerged during trial to prosecute him.

Learned counsel for the petitioner has contended that after the submission of final report under Section 173(2) Cr.P.C., the matter was committed to the competent Court for trial and at that stage of Section 193 Cr.P.C., no cognizance was taken against the petitioner and aggrieved against that, the complainant approached this Court pressing for cognizance against Surjit Singh. Learned counsel has invited the attention of this Court to the order dated 9.8.2016 (Annexure P-4), whereby the prayer of the complainant for taking cognizance against petitioner Surjit Singh was not accepted.

It is argued by learned counsel for the petitioner that since the petitioner by virtue of the above order stands discharged, therefore, the

provisions of Section 319 Cr.P.C. cannot be attracted to additionally array him as an accused and the order dated 9.8.2016 keeps his innocence intact.

In the considered view of this Court, the argument is absolutely misplaced as it is not a case where the petitioner was sent as an accused to face trial. Rather, he was found innocent and was placed in Column No.2. Therefore, it cannot be construed that the order dated 9.8.2016 passed by this Court had discharged him. It is, otherwise, clear that the complainant who wanted cognizance to be taken against petitioner Surjit Singh and the said prayer was declined.

The second argument advanced by learned counsel for the petitioner is that the statement of Amrik Singh is nothing, but echoes the averments of the FIR. Since in the first version the petitioner was found innocent, therefore, on the same allegations, the exercise of power under Section 319 Cr.P.C. is not justified. A cross-version is also set up by Baljit Singh @ Lakha wherein petitioner Surjit Singh is stated to be an eye witness and it is a case where both sides had used fire arms and had suffered injuries.

With the assistance of the learned counsel for the petitioner, I have perused the order impugned in this revision petition and find that the trial Court has given valid reasons for summoning under Section 319 Cr.P.C. as there is evidence which has emerged during trial indicating participation of petitioner Surjit Singh. The relevant portion is extracted below:-

“It is not a simple repetition of name of these accused but his deposition speaks about the participation and role played in the occurrence by accused Surjit Singh. It is categorically deposed

by PW-1 Amrik Singh that Surjit Singh had come there on a Swift car bearing No.PB-10CP-3695 and he was carrying one .32 bore revolver. He further deposed that Surjit Singh got down from his car and fired with his .32 bore revolver coupled of time. Motive behind the occurrence is that Baljit Singh and Surjit Singh wanted to take illegal possession of said land and second motive was that at that time, Naib Singh had stood in the Panchayat elections against Surjit Singh. Perusal of file further reveals that empty cartridges were recovered from the spot by police during investigation or the case. Thus, Surjit Singh sought to be summoned as additional accused has been assigned participation in the commission of offence in a categorical manner by the complainant-witness in his testimony.”

At the stage of summoning an additional accused, the Court is not to test the evidence to record a satisfaction that it would lead to the conviction of the accused sought to be summoned. Strong suspicion regarding involvement of person in the crime is enough to exercise the jurisdiction under Section 319 Cr.P.C. In the considered opinion of this Court, the impugned order passed by the trial Court is based on correct appreciation of law and the evidence on record and does not suffer from any illegality or impropriety warranting any interference.

Accordingly, the petition stands dismissed.

December 6, 2018
Gulati

(MANOJ BAJAJ)
JUDGE