

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

Crl. Revision No. 1103 of 2016(O&M)

Date of Decision: 04.09.2018

Yash Pal .. **Petitioner**
Vs.

State of Haryana & Anr. .. **Respondents**

with **Crl. Revision No. 1259 of 2016(O&M)**

Tej Ram & Ors. .. **Petitioners**
Vs.

State of Haryana .. **Respondent**

with **Crl. Revision No. 1494 of 2016(O&M)**

Lokesh .. **Petitioner**
Vs.

State of Haryana & Anr. .. **Respondents**

and **Crl. Revision No. 1650 of 2016(O&M)**

Charan Singh & Ors. .. **Petitioners**
Vs.

State of Haryana .. **Respondent**

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Argued by:- **Mr. N.S. Shekhawat, Advocate for**
petitioners in CRR-1259 & 1650 of 2016.

Mr. Rajesh Lamba, Advocate for
petitioners in CRR-1103 and 1494 of 2016.

Ms. Mahima Yashpal, AAG Haryana.

Mr. Dharampal, Advocate for
Mr. Vivek Khatri, Advocate
for respondent No.2-complainant.

ANITA CHAUDHRY, J.

All the above-referred petitions have been preferred against the order dated 04.03.2016 passed by the Addl. Sessions Judge, Palwal vide which all the petitioners have been summoned under Section 319 Cr.P.C. as an additional accused to face trial in FIR No. 277 dated 22.07.2011, Police Station Sadar Palwal, wherein charge against the co-accused was framed under Sections 148, 149, 302, 323 and 325 IPC.

It is relevant to mention here that earlier the application filed by the prosecution under Section 319 Cr.P.C. was dismissed by the trial Court and the matter came up before this Court in Crl. Revision No. 3988 of 2013 and vide order dated 08.09.2015 this Court had remanded the matter to the trial Court for passing orders afresh in the light of law laid down in the case of **Hardeep Singh Vs. State of Punjab & Ors. 2014(3) SCC 92.**

After hearing the parties, the learned trial Court has passed the impugned order and the petitioners have been summoned as additional accused. Dis-satisfied therewith they have preferred the instant revision petitions, which are being disposed of by this common order passed in CRR-1103 of 2016.

The FIR in this case was registered at the instance of injured PW2 Raj Kumar who was admitted in the hospital along with Shashi (PW3). He gave the genesis of occurrence alleging that Yashpal, Lokesh and Pankaj were stalking and misbehaving with the daughter of his uncle Layak Ram. It was told by the girl on 21.07.2011. On this, Layak Ram had gone to the house of Bhoop Lal father of Pankaj for making a complaint. Bhoop Lal got annoyed and hurled abuses and exhorted to murder Layak Ram and premeditated attack was opened by Tej Ram son of Jeet Ram, Sachin,

Manish sons of Tej Ram, Prithvi son of Sangram, Ashok and Madan sons of Prithvi, Kishan, Devi, Pappu sons of Dharam Singh, Charan son of Kishan Singh, Rohtash, Suresh sons of Devi, Pankaj son of Bhoop Lal, Geeta Wife of Bhoop Lal, Neeraj, Bholu sons of Pappu and Bhoop Lal, who were having iron rods, lathis and *guptis*. The complainant, his brother Shashi and Naveen witnessed the occurrence and tried to intervene. A *gupti* blow was given by Bhoop Lal on the waist of Layak Ram. He also inflicted a blow on the chest of Naveen. A blow with an iron rod was given by Pankaj on the head of the complainant. A lathi blow was given by Rohtash on the right arm of complainant. Thereafter, all the assailant attacked Naveen. They raised alarm upon which Jai Lal, Ram Swarup and other neighbours rushed to the spot. On seeing them, all the assailants fled from the spot. Layak Ram and Naveen succumbed to the injuries to the way to hospital.

On the basis of aforesaid statement, case was registered and investigated. On completion of investigation, the police filed the challan against accused Bhoop Lal, Narender @ Pappu, Suresh and Geeta. Pankaj was found to be juvenile and separate challan was filed before the Juvenile Justice Board. Involvement of the other persons was not found by the investigating agency and they were placed in column No.2 of the challan.

After framing of charge, injured Raj Kumar and Shashi were examined as PW2 and PW3 respectively. The prosecution filed an application under Section 319 Cr.P.C. seeking summoning of the petitioners as additional accused. Initially, as noticed above, the application of the prosecution was dismissed. After remand, the same has been allowed and the petitioners have been summoned as an additional accused. It is relevant to mention here that as per the judgment dated 13.07.2018, placed on

record, the trial against the co-accused has culminated into their conviction.

Reply was filed by the State admitting that during investigation involvement of the petitioners was not found and they were not challaned.

I have heard learned counsel for the parties and have gone through the paper-book carefully.

Learned counsel for the petitioners had urged that only the presence of petitioners have been shown at the spot and no specific act was attributed to them, except to Rohtash that too of giving a *danda* blow on the right arm of complainant, which falsified from the fact that no injury was found on the arm of complainant. According to him, after a detailed and thorough investigation presence of the petitioners was not found at the spot by the investigating agency and except the bald statements of complainant and injured, there was no new material on record which could prove the complicity or presence of the petitioners at the spot. According to him, the witnesses had only reiterated the allegations of the FIR which were found incorrect so far as the present petitioners are concerned and in the absence of any new evidence/ material on record, the trial Court has erred in summoning the petitioners. Reliance was placed upon **Brijendra Singh & Ors. Vs. State of Rajasthan, 2017(3) RCR(Crl.) 374** and **Hardeep Singh Vs. State of Punjab & Ors. 2014(3) SCC 92** to contend that there was nothing on record which warrants the summoning of the petitioners as additional accused.

Learned State counsel had admitted that during investigation, the petitioners were found innocent by the investigating agency.

Learned counsel for the complainant had urged that it was the case of the prosecution from the beginning that the petitioners were part of

the unlawful assembly and in furtherance of their common intention, opened the attack, which resulted into death of Layak Ram and Naveen while Raj Kumar and Shashi sustained injuries. According to him, the investigation was biased and it resulted in giving them a clean chit and the trial Court had rightly summoned them.

In **Hardeep Singh's case (supra)**, the Hon'ble Apex Court deliberated on the issue regarding the powers under Section 319 Cr.P.C. Dealing with the question regarding degree of satisfaction required for invoking the power under Section 319 Cr.P.C., numerous judgments were taken into account and it was observed:-

98. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

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 un rebutted, 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."

It is apparent that for the purpose of forming an opinion to summon an additional accused, the Court must be satisfied that there exists an extra ordinary case for exercise of jurisdiction. The case in hands needs to be analyzed in view of the law laid down referred to above.

Copy of challan was placed on record. Record shows that at the time of lodging FIR, the complainant named the petitioners, but the allegations were that they were part of the unlawful assembly which had inflicted injuries to Raj Kumar, Shashi, Layak Ram and Naveen. No specific injury had been assigned to them, except to petitioner Rohtash who was stated to have given a *danda* blow on the arm of complainant. A perusal of MLR, Annexure P-7 would reveal that only one injury with blunt weapon was found on his forehead. Investigation was carried out and it was concluded by the DSP(Investigation) as well as the Inspector, who had investigated the matter and found that the petitioners were not present at the spot at the time of occurrence. The complainant Raj Kumar and Shashi while appearing in the witness-box reiterated the allegations of the FIR and apart therefrom they tried to improve the version by assigning role to some petitioners. Petitioners Yashpal and Lokesh were not stated to be present at the spot at the time of occurrence, still they were sought to be involved

when it was claimed that Manish, Ashok, Charan and Neeraj had caught Naveen and inflicted injuries. No injury was attributed to them in the FIR. PW Shashi made improvement that Geeta and Devi Singh had caught him and Tej Ram, Prithi, Madan and Bholu had given kick and fist blows. All these narrations were conspicuously missing in the FIR. PW Raj Kumar had made contradictory statement still the petitioners had been summoned by the trial Court on the basis of exaggerated and improved statements made by the witnesses at the trial. Much more in the shape of strong evidence was required to be led to prove the complicity of the petitioners in the offence, as has been held in Brijendra's case (supra). The statements given by the complainant and other witness regarding presence and complicity of the petitioners were found incorrect by the investigating agency. No new facts or material was brought on record by the prosecution. Some of the petitioners were found present at their houses in Delhi by the investigating agency. Petitioners Yashpal and Lokesh were not named in the FIR. The plea that the petitioners shared common intention with co-accused stands belied from the fact that the occurrence took place at the spur of moment when Layak Ram had gone to the house of Bhoop Singh to make a complaint. The FIR was lodged the next day and the incorporation of names of the petitioners in the FIR was result of deliberations. In totality, there was no cogent and convincing evidence with the trial Court to prima facie satisfy about the involvement of the petitioners.

In Brijendra Singh's case (supra) in similar situation the trial Court had relied upon the statement of complainant and other witnesses to summon the additional accused, which was not different than the statements recorded under Section 161 Cr.P.C. and was disbelieved to the extent of the

persons sought to be summoned therein, the order was set aside and it was held as under:-

“This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so- called verbal/ocular version. Thus, the ‘evidence’ recorded during trial was nothing more than the statements which was already there under [Section 161 Cr.P.C.](#) recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether ‘much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.”

In ***Krishnappa v. State of Karnataka, 2004 (4) RCR (Criminal) 678***, the Court ruled that the power to summon an accused is an extraordinary power conferred on the Court and it should be used very sparingly and only if compelling reasons exist for taking cognizance against the person other than the accused.

The Apex Court in ***Sarabjit Singh and another v. State of Punjab and another*** reported as 2009(3) RCR (Criminal) 388 observed as follows:-

“17. The provision of Section 319 of the Code, on a plain reading, provides that such an extraordinary case has been made out must appear to the court. Has the criterion laid down by this Court in Municipal Corporation of Delhi (supra) been satisfied is the question? Indisputably, before an additional accused can be summoned for standing trial, the nature of the evidence should be such which would make out grounds for exercise of extraordinary power. The materials brought before the court must also be such which would satisfy the court that it is one of those cases where its jurisdiction should be exercised sparingly. We may notice that in Y. Saraba Reddy v. Puthur Rami Reddy and Anr. [JT 2007 (6) SC 460], this Court opined:

"...Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates that evidence of witnesses given in Court..."

Similar view has been reiterated in the cases of **Asha Rani Vs. State of Punjab 2014(7) RCR(Crl.) 238**, **Suman Ashok Kumar Vs. State of Punjab 2012(4) CCR 115**, **Dalpreet Singh & Ors. Vs. State of Punjab & Ors. 2012(6) RCR(Crl.) 2315** and **Sukkh Radas & Ors. Vs. State of U.P. & Anr. 2011(6) RCR(Crl.) 2582**.

In the considered opinion of this Court, the trial Court had

erred in summoning the petitioners while exercising the powers under Section 319 Cr.P.C. Only because the complainant named the petitioners again, was not enough to prove their complicity. No new material had been produced on record by the complainant. No reasons had been given while summoning the petitioners nor the evidence on record had been discussed. The prima facie opinion which is to be formed requires stronger evidence than mere probability of the complicity of the petitioners.

In view of the above, the petitions are allowed and the impugned order summoning the petitioners is set aside.

September 04, 2018
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No