

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 2626 of 2014

Date of Decision: 02.07.2018

Sugreev Kumar

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. T.S. Sangha, Sr. Advocate with
Mr. S.S. Sidhu, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

Mr. J.S. Bedi, Sr. Advocate with
Mr. Akashdeep Singh, Advocate
for respondents no. 2 and 3.

Mr. Sukhtej Singh, Advocate
for Mr. Amit Rana, Advocate
for respondent no. 7.

None for respondents no. 4, 5, 6 and 7.

SURINDER GUPTA, J.

This is revision against order dated 24.07.2014 passed by Additional Sessions Judge, Fazilka, whereby application filed by prosecution to summon respondents no. 2 to 8 and Sonu son of Jai Pal was partly allowed. While Sonu son of Jai Pal was ordered to be summoned as accused to face trial for offences punishable under Sections 302, 307 and 341 read with Section 34 of Indian Penal Code and 25 of the Arms Act, application qua respondents no. 2 to 8 was dismissed.

2. FIR (Annexure P-1) in this case was registered on the statement of Manohar Lal, which reads as follows:-

Bishnoi resident of Raipura P.S. Sadar Abohar aged about 35 years stated that I am resident of above said address and is agriculturist. We are three brothers. Sugreev is the elder and younger to him is Sandeep and I. About 4 years back my father namely Hanuman Ram got purchased 9 ½ acres of land from Seth Mohan Lal son of Mokham Chand resident of Fazilka at village Raipura. On that land Dalip son of Hari Ram Parjapat and others were having possession as tenant but later on we came to know that the possession of this land is purchased by Vikram son of Krishan Dev from Dalip and others through an affidavit. This land was barren because of that it always remains uncultivated. We filed a case in the Hon'ble Court of SDM for the ejectment of tenants and same was decided in our favour and the SDM Sahib Abohar got the tenant ejected. On dated 29.08.2013 I alongwith my brother Sandeep, Sugreev, my father Hanuman Ram, my uncle (Chacha) Mahi Ram son of Ganpat Ram, Budh Ram son of Hazari Ram, Amar Singh son of Ram Narayan caste Bishnoi resident of Raipura and alongwith our servant Sham Lal son of Tulsi Ram caste Balmik resident of Raipura reached our land to take possession on our Bolero Car bearing No. PB-15-A-0053 driven by my father Hanuman Ram and my brother Sandeep Kumar was sitting on the front seat alongwith my father and rest of the persons were sitting behind. Then the halqua kanungo and patwari, who have to come to spot had not reached there. To bring them to spot we were coming back to our village in our car at about 3.30 pm.

When we reached on uncultivated sand dune (tibba) near the colony of our village three vehicles one Innova bearing no. PB-15-F-7329, Bolero and one Swift Car colour white came from the village side. Vikram Gilla son of Krishan Dev armed with 315 bore licence rifle, Vikas son of Krishan Dev armed with licenced pistol and Krishan Dev son of Manohar Lal armed with licenced pistol all resident of Raipura alighted from those vehicles accompanied by 10/12 unidentified persons armed with dangs, sotas and swords, while one person was having 12 bore gun. I can identify those 10/12 persons, if they come in front of me. Vikas exhorted that we shall be taught a lesson for purchasing land and taking possession and the persons armed with weapons fired upon us. Vikram Gilla fired straight at my brother Sandeep and upon my father from his rifle and other armed persons also fired at our Bolero car which hit my father, my brother Sugreev, my uncle Mahi Ram, Budh Ram, our servant Sham Lal and my brother Sandeep Kumar and they got injured. The occurrence was witnessed by me. The assailants, using their weapons, kept us cordoned. We raised the alarm "Marta Marta" at which all the accused fled away from the spot alongwith their respective weapons and vehicles. Thereafter, I brought my brother, father, uncles and servant in vehicle at Civil Hospital, Abohar for treatment where doctor sahib declared Sandeep Kumar as dead. My father Hanuman and my brother were referred to Medical College, Faridkot by doctor as their condition was serious and

started the treatment of others at Civil Hospital, Abohar.”

3. After investigation police presented the challan against accused Vikram Gilla, Gurmeet Singh and Sunil while respondents no. 2 to 8 were found innocent and not challaned.

4. At the very out set learned counsel for the petitioner has confined the relief claimed in this petition only qua respondents no. 2 and 3 i.e. Krishan Dev and Vikas son of Krishan Dev and has opted not to challenge the impugned order qua respondents no. 4 to 8.

5. Learned counsel for the petitioner has argued that complainant-Manohar Lal in his statement recorded by the police has specifically named Krishan Dev and his son Vikas. As per version of complainant, Vikram Geela accompanied by respondents no. 2-Krishan Dev and 3-Vikas armed with rifle/pistol came to the spot alongwith 10/12 unidentified persons, who were armed with *dangs*, *sotas*, swords and one person was having 12 bore gun. On *lalkara* of Vikas to teach lesson for purchasing the land and taking its possession, persons armed with weapons fired at the complainant party. While Vikram Gilla has been specifically named for firing shots at father and brother of complainant, it was alleged that other persons fired at Bolero car of complainant and at his father, brother-Sugreev, uncles Mahi Ram, Budh Ram, servant Sham Lal and brother-Sandeep Kumar. As per version of complainant, Krishan Dev and Vikas were armed with weapons and it is clear from his statement that they had fired at complainant party resulting in death of two persons and injuries to several persons. The trial Court has committed grave error while declining to summon Krishan Dev and Vikas with the observation that they have been attributed *lalkara* only. Both Krishan Dev and Vikas were identified at the spot, named in the FIR and

were attributed gunshot injuries to complainant party. They have set up the plea of *alibi*, which was not looked into by the trial Court with the observation that it is a matter to be seen at the stage of defence evidence. He has submitted that there is ample evidence on record to summon Krishan Dev and Vikas. Though, trial of main case has reached the final stage, both these accused can be ordered to be tried separately.

6. Learned counsel for respondents no. 2 and 3 has argued that the complainant has named Krishan and his son Vikas only with a view to falsely implicate them in this case. Admittedly, there is land dispute between the parties. Both these persons have been attributed *lalkara*. As per complainant, Vikas had raised *lalkara* that complainant party be taught lesson for purchasing and taking possession of the disputed land. Learned trial Court has taken note of this fact that possession of the land had not been taken by complainant party. Both these persons were 650 kms. away from the place of occurrence and the police during investigation has collected evidence in this regard and in the report, copy of which has been placed on record as Annexure R-2/1, it has been observed that both these persons were not present at the spot. Though, learned trial Court has observed that the plea of *alibi* can be set up in defence but keeping in view the fact that the police on the basis of evidence and documents has found the plea of Krishan Dev and Vikas as correct that on the day of occurrence, they were present in Bhilwara (Rajasthan), order of trial Court declining the application of complainant to summon Krishan Dev and Vikas cannot be assailed on mere statement of complainant, which is just repetition of his statement recorded by the police during investigation.

7. The petitioner in his application (Annexure P-4) had sought to

summon eight persons including Sonu son of Jai Pal as additional accused. The application to summon Sonu son of Jai Pal was allowed while remaining persons named in the FIR, now arrayed as respondents no. 2 to 8, were not summoned. Learned counsel for the petitioner has not pressed the application filed before the trial Court to summon respondents no. 4 to 8 and has pressed the same only for summoning Krishan Dev and Vikas (respondents no. 2 and 3), who were named in the FIR. While declining the application the trial Court has observed that they appear to have been implicated falsely for the reasons that they have been attributed *lalkara* for teaching lesson for taking possession of the land, which admittedly had not been taken by the complainant party.

8. On perusal of paper-book, I find that while reasoning as given by learned trial Court could not be assailed still there is another reason on record, which though was not taken into account by learned trial Court, make out no case for summoning of respondents no. 2 and 3 i.e. Krishan Dev and Vikas as additional accused.

9. Admittedly, there was land dispute between the parties, which led to present occurrence. The complainant alleged presence of Vikas son of Krishan Dev and Krishan Dev at the time of occurrence. However, the police on investigation has found that on the day of occurrence they were present at Bhilwara (Rajasthan). Report to this effect was submitted. It will be appropriate to refer to relevant part of the report (Annexure R-2/1), which reads as follows:-

“From the inquiry, it has been found that Krishan Dev s/o Mohan Lal and his son Vikas s/o Krishan Dev, residents of Raipura, presently residing at Sancheti Colony, Bhilwara

(Raj.) were not found to have come to village Raipura on the day of occurrence. Bhilwara is at a distance of about 650 kilometers from village Raipura, which takes about 10 hours journey by car. There is no facility of going there by air. Besides, Krishan Dev and Vikas do the business of crusher in Bhilwara and on that day also, they had done their works relating to crusher in their city Bhilwara, met a number of people of the colony. Krishan Dev is habitual of playing volleyball every morning as an exercise and in the morning of 29.08.2013, he played volleyball alongwith his other friends. On 29.08.2013, Vikas and Krishan Dev had made money transaction also in connection with their business vide an affidavit and this has been corroborated from stamp vendor from whom stamp paper was purchased and notary public. Apart from this, Krishan Dev got filled petrol in his Scorpio car no. 7329 from Garima Petroleum, village Pansal, Bhilwara on the same day and had gone to their crusher. This fact has been verified from the labour working at the crusher and people of nearby crushers. Apart from this, on the same day, the Scorpio vehicle no. PB-15G-7329 of Krishan Dev and motorcycle no. RJ-06SR-8888 of Vikas Bishnoi were also challaned by Police Station Pur, Distt. Bhilwara (Raj.) and they had deposited the penalty of said traffic challans. Photocopies of affidavit, photocopy of register of stamp vendor, photocopy of receipt regarding filling of petrol, photocopy of register of notary public and relevant statements

are attached herewith.

From the inquiry conducted by me so far, Krishan Dev s/o Sohan Lal and his son Vikas, residents of Raipura, presently Sancheti Colony, Bhilwara had not come to village Raipura, not they were involved in quarrel. Complainant has deliberately named them in the case because Krishan Dev is father of Vikram Geela and Vikas is brother of Vikram Geela so that nobody could pursue the matter.....”

10. Hon'ble Apex Court while defining the scope of Section 319 Cr.P.C. in case **Brijendra Singh and others vs. State of Rajasthan, 2017 (3) RCR (Criminal) 374**, has observed in paras 13 to 15 as follows:-

“13. In order to answer the question, some of the principles enunciated in Hardeep Singh's¹ case may be recapitulated:

Power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some evidence against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The evidence herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to

invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross- examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.

14. *When we translate the aforesaid principles with their application to the facts of this case, we gather an impression that the trial court acted in a casual and cavalier manner in passing the summoning order against the appellants. The appellants were named in the FIR. Investigation was carried out by the police. On the basis of material collected during investigation, which has been referred to by us above, the IO found that these appellants were in Jaipur city when the*

incident took place in Kanaur, at a distance of 175 kms. The complainant and others who supported the version in the FIR regarding alleged presence of the appellants at the place of incident had also made statements under Section 161 Cr.P.C. to the same effect. Notwithstanding the same, the police investigation revealed that the statements of these persons regarding the presence of the appellants at the place of occurrence was doubtful and did not inspire confidence, in view of the documentary and other evidence collected during the investigation, which depicted another story and clinchingly showed that appellants plea of alibi was correct.

15. *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.”

11. In this case, statements of complainant and witnesses is same, which were recorded by the police during investigation. Learned trial Court has observed in its order that Vikas was attributed *lalkara* to the effect that complainant party be taught lesson for taking possession of the disputed land while Sugreev (PW) had admitted in his cross-examination that possession of the disputed land had not yet been taken by them. This shows that respondents, Krishan Dev and Vikas were arrayed as accused because of enmity between the parties and the police during investigation had collected the evidence, which prove that both these respondents were far away from the place of occurrence.

12. Hon'ble Apex Court in case ***Brijendra Singh (supra)*** has observed that for summoning the additional accused under Section 319 Cr.P.C. degree of satisfaction is much stricter. Power under Section 319 Cr.P.C. is discretionary and extraordinary power which is to be exercised sparingly and only in those cases where circumstances of the case so warrants and strong and cogent evidence occurs against a person from the evidence led before the Court and not in a casual and cavalier manner. Applying the ratio of judgment in case of ***Brijendra Singh (supra)***, which squarely covers the present case, I find no merit in this revision petition. No case is made out for summoning respondents no. 2 and 3 i.e. Krishan Dev and Vikas as additional accused.

Dismissed.

July 02, 2018

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No