

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3865-2015 (O&M)
Date of decision: 30.11.2018

Gurmail Singh and another

... Petitioners

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Anurag Chopra, Advocate
for the petitioners.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this revision petition is for setting aside the order dated 23.07.2015 passed by the Additional Sessions Judge, Fatehgarh Sahib, vide which the petitioners have been summoned as additional accused, while allowing an application filed by the prosecution under Section 319 Cr.P.C., in FIR No.68 dated 25.08.2013 under Sections 307, 148, 149 IPC and Sections 25/27/54/59 of Arms Act, registered at Police Station Mulepur, District Fatehgarh Sahib.

Brief facts of the case, as per allegations in the FIR, are as under: -

“Statement of Gurpreet Singh, Caste Jatt resident of Ucha Reona, PS Mullepur, aged 32. It is stated that I am resident of the above mentioned address and am a farmer. Today me and my brother

Ishwar Singh, on our swift car went to Ucha Reona to our farm for work. I was driving and parked the car on the side and went in the fields to work. Time was around 1.30 pm when a Figo Car came to our field and from there Harnail Singh r/o Ram Gargh Thana Amloh was having a rifle along with Gurmail Singh s/o Arjan Singh, who was armed with belt of cartridges, which had many cartridges. Two unidentified persons who were armed with dandas and I can recognize them if they come in front of me. Behind them, more people came walking, Nachhattar Singh who had a dang with him and Jagjit Singh who had a rifle, Ranjit Singh s/o Nachhattar Singh who had a naked kirpan, Malkiat Singh who had a gandasi and Kulwant who was holding a danda came, all residents of Ucha Reona. Out of all, Harnail Singh raised a lalkara and said that we have paid earnest money of this land and what are these people doing there. Lets teach them a lesson. Jagjit Singh holding a rifle fired a shot at us. This shot hit my brother Ishwar Singh on his right side of the chest. Harnail Singh fired a shot which hit my brother Ishwar Singh in his stomach. When we raised an alarm, then Jagjit Singh also fired which hit him on his legs and back. They also fired at our car. Some shots touched an adjacent house and hit Amritpal Singh standing there. If we had not run from there, these people would have killed me. All this planning was to kill us. Amritpal and Ishwar were taken to Civil Hospital and they were referred to Sector-32 Medical Hospital, Chandigarh. Both were admitted there. The reason for dispute is

regarding a land at Ucha Reona and hence with intention to kill, fired at my brother and Amritpal Singh and injured them. When you came I was present at hospital along with Ishwar Singh. I have stated my statement. Action may be taken. Gurpreet Singh signed/Karam Chand SI, PS Mullepur Dated: 25.8.2013.”

Thereafter, the police conducted the investigation and on basis of the same, petitioners Gurmail Singh and Harnail Singh were found to be innocent and were kept in column No.2 in the report submitted under Section 173 Cr.P.C. The trial Court thereafter recorded the statement of complainant Gurpreet Singh who appeared as PW1 and deposed on the lines of version given to the police. Thereafter, the prosecution moved an application under Section 319 Cr.P.C. for summoning the petitioners as additional accused. The trial Court vide order dated 23.07.2015 allowed the application and summoned the petitioners along with one Kulwant Singh to face the trial under Sections 307, 324, 148, 149 IPC. The operative part of the impugned order is reproduced as under: -

“The prosecution while leading evidence in terms of the charge dated 20.1.2015, examined in chief PW1 Gurpreet Singh on 18.4.2015 partly cross examined on 8.5.2015 and filed the application under Section 319 of Cr.P.C. for summoning of Kulwant Singh son of Hari Singh resident of village Reona Ucha police station Mulepur Fatehgarh Sahib, Gurmail Singh son of Arjan Singh resident of the village Manupur police station Khanna Ludhiana and Harnail Singh son of Sher Singh resident of village Ramgarh police station Amloh Fatehgarh Sahib as additional

accused. The copy of the application was supplied to the accused Jasvir Singh and others already facing trial for filing reply if any on the record so that the application may be decided in a proper manner. The accused Jasvir Singh and others already facing trial without having locus standi to contest the application under section 319 of Cr.P.C. filed reply by taking preliminary objections that the prosecution has willfully concealed the material proceedings initiated by the complainant with regard to the present case under section 482 of Cr.P.C., before the Hon'ble Punjab and Haryana High Court. The accused Jasvir Singh and others, facing trial, while denying all other averments contained in the application under section 319 of Cr.P.C., in hand, have prayed for dismissal of same.

The rival stands taken by prosecution for the purpose of filing the application under section 319 of Cr.P.C. for summoning of Kulwant Singh son of Hari Singh resident of village Reona Ucha police station Mulepur Fatehgarh Sahib, Gurmail Singh son of Arjan Singh resident of the village Manupur police station Khanna Ludhiana and Harnail Singh son of Sher Singh resident of village Ramgarh police station Amloh Fatehgarh Sahib as the additional accused as well as taken by the accused Jasvir Singh and others already facing trial, for the purpose of filing reply even without having locus standi to contest the same, go to reveal that Kulwant Singh son of Hari Singh resident of village Reona Ucha police station Mulepur, Gurmail Singh son of Arjan Singh resident

of the village Manupur police station Khanna Ludhiana and Harnail Singh son of Sher Singh resident of village Ramgarh police station Amloh Fatehgarh Sahib as the additional accused were arrayed in column no.2 of the report under section 173 of Cr.P.C. only filed against accused Jasvir Singh, Avtar Singh, Nachhattar Singh, Jagjit Singh, Ranjit Singh @ Rana and Malkit Singh. The accused Kulwant Singh son of Hari Singh resident of village Reona Ucha police station Mulepur Fatehgarh Sahib, Gurmail Singh son of Arjan Singh resident of the village Manupur police station Khanna Ludhiana and Harnail Singh son of Sher Singh resident of village Ramgarh police station Amloh sought to be summoned as the additional accused, were figured by the complainant Gurpreet Singh while recording his statement on 25.8.2013 to SI Karam Chand incorporated in FIR of this case registered against the additional accused sought to be summoned also and were referred by the complainant Gurpreet Singh while appearing as PW-1 against the accused already facing trial under section 307, 324, 148, 149 of IPC. The crux of settled principle of law laid down for deciding such kind of the application under section 319 of Cr.P.C. is that the additional person can be summoned as accused if a strong case more than prima facie and less than conviction of the same is warranting on record as per law discussed in all referred citations on one aspect or the other and the present case is covered under said settled principle of law because a strong case more than prima facie and less than

conviction of said Kulwant Singh son of Hari Singh resident of village Reona Ucha police station Mulepur Fatehgarh Sahib, Gurmail Singh son of Arjan Singh resident of the village Manupur police station Khanna Ludhiana and Harnail Singh son of Sher Singh resident of village Ramgarh police station Amloh, now sought to be summoned as the additional accused in this case vide application in hand is made out from the crux of material on record because the involvement of Kulwant Singh, Gurmail Singh and Harnail Singh as per commission of offence is the same to that of accused facing trial of the case. The stand taken by accused facing trial in the reply filed to contest the application is matter of evidence yet to led on record by the accused to the said effect. Therefore, the application under section 319 of Cr.P.C. in hand for summoning Kulwant Singh son of Hari Singh resident of village Reona Ucha police station Mulepur Fatehgarh Sahib, Gurmail Singh son of Arjan Singh resident of the village Manupur police station Khanna Ludhiana and Harnail Singh son of Sher Singh resident of village Ramgarh police station Amloh as the additional accused is found to be sustainable and is thus allowed and the accused Kulwant Singh son of Hari Singh resident of village Reona Ucha police station Mulepur Fatehgarh Sahib, Gurmail Singh son of Arjan Singh resident of the village Manupur police station Khanna Ludhiana and Harnail Singh son of Sher Singh resident of village Ramgarh police station Amloh are ordered to be summoned to face trial under sections 307, 324, 148,

149 of IPC, now for 13.8.2015 through special passenger.

*Pronounced
on 23.7.2015*

*Sd/-
(Ajaib Singh)
Addl. Sessions Judge,
Fatehgarh Sahib.”*

This petition is pending since 2015 and on 21.10.2015, while issuing notice of motion, it was directed that the proceedings against the petitioners shall be subject to final outcome of this case. Thereafter, the report from the trial Court was sought about status of the trial. The trial Court submitted a report on 28.08.2016 stating that the statement of two prosecution witnesses are recorded and the trial Court is making effort to record the statements of remaining witnesses on day to day basis.

In view of the above, again it was directed to the trial Court to proceed ahead in the case as per law.

Learned counsel for the petitioners had made a statement on 15.12.2017 that even the petitioners have appeared before the trial Court and are facing the trial. It is further submitted that the trial Court, while recording the statements, has not appreciated the well settled principle of law as held by the Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others, 2014 (1) RCR (Crl.) 623** and **Brijendra Singh and others Vs. State of Rajasthan, 2017 (2) Law Herald (SC) 903**, wherein it has been held that before summoning a person as an additional accused, the trial Court is required to record a finding that the evidence, which has come on record, is more than prima facie, but a short of convicting a person and it should not be mere reiteration of the statement of the complainant made before the police.

Learned counsel for the petitioners has further relied upon an

affidavit filed by the Deputy Superintendent of Police, Sub Division Fatehgarh Sahib, District Fatehgarh Sahib in CRM-M-8229-2014 filed by Gurpreet Singh, (complainant), in which it has come on record that there was some land dispute regarding inheritance of late Hanbans Singh and on that account, on previous occasion, even FIR was registered against the complainant party. Learned counsel has submitted that in this affidavit, it has come that in the earlier FIR, it is the complainant, who has caused injuries to the petitioners party and therefore, it is submitted on behalf of the petitioners that they have been falsely implicated in the present FIR.

Learned counsel for the petitioners has further submitted that in the enquiry conducted by the Senior Superintendent of Police, Fatehgarh Sahib, the petitioners were not found to be involved in the commission of offence in the present FIR and therefore, they were found innocent.

In reply, learned State counsel has submitted that as per version given in the FIR, complainant Gurpreet Singh, who is eye-witness, has named both the petitioners and has also assigned the role attributed to them. It is stated that petitioner Harnail Singh was armed with rifle and petitioner Gurmail Singh was carrying a belt of cartridges. There were two unidentified persons, who were carrying sticks and one Nachhattar Singh and Jagjit were having sticks and Jagjit was also carrying a rifle. One Ranjit was carrying a naked kirpan and Malkiat Singh was having a gandasi and Kulwant Singh was holding a stick. Harnail Singh raised a lalkara to teach a lesson for raising a land dispute. On this, Jagjit fired a shot with rifle, which hit on the right side of chest of brother of the complainant Ishwar Singh and petitioner Harnail Singh fired a shot, which hit Ishwar Singh on his stomach. Learned State counsel has further

submitted that the version of the complainant is duly supported by the medical evidence i.e. MLR of injured Ishwar Singh and therefore, the trial Court has rightly summoned the petitioners as additional accused.

After hearing learned counsel for the parties, I find no ground to interfere with the findings recorded by the trial Court.

- (a) Complainant Gurpreet Singh and his brother Ishwar Singh (injured) have clearly stated in FIR and in Court that both the petitioners were present at the spot, armed with rifle and petitioner Harnail Singh opened a fire, which hit on the stomach of Ishwar Singh. He was referred to GMCH, Sector-32, Chandigarh and was medico-legally examined and firearm injury attributed to petitioner Harnail Singh is corroborated by the medical evidence.
- (b) The factum of dispute regarding land between the parties and the earlier FIR registered against the complainant, are matter of evidence, which the petitioners can lead in their defence. Similarly, affidavit of DSP, Fatehgarh Sahib filed in an earlier petition, referred to above, is also a matter of defence evidence.
- (c) The petitioners have failed to produce on record the report under Section 173 Cr.P.C. despite availing number of opportunities, to explain how the police, during the investigation, has found them to be innocent, when there are direct allegations in the FIR that they have caused firearm injuries to injured Ishwar Singh, who appeared as PW2 later on. The petitioners have even further failed to produce on record the enquiry report conducted by the SSP, Fatehgarh Sahib, on the basis of which they are claiming that they

are found innocent and both these documents are withheld from the knowledge of this Court.

- (d) Even otherwise, the trial Court has recorded a categoric finding that the evidence, which has come on record, is more than prima facie and therefore, both the petitioners along with Kulwant Singh are rightly summoned as additional accused.
- (e) It is admitted case of the parties that third accused Kulwant Singh, who is also summoned with the petitioners, has not challenged the same impugned order, summoning him as an additional accused and is facing the trial.
- (f) It is also a matter of record that some evidence has already been recorded in terms of the earlier orders passed by this Court. On appreciation of statement of PW Gurpreet Singh before the police, which is forming basis for registration of the FIR, in which both the petitioners have been named and are attributed firearm injuries to injured Ishwar Singh, which is further corroborated by the MLR, I hold that the trial Court has rightly summoned the petitioners as additional accused under Section 319 Cr.P.C. in view of **Hardeep Singh** and **Brijendra Singh's** case (supra).

For the reasons recorded above, this revision petition is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

30.11.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No