

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

CRR-3250-2016

Date of decision-17.11.2018

Gurpyar Singh

....Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Sherry K.Singla, Advocate for the petitioner.

Mr. Abhaypal Singh Gill, AAG, Punjab.

Mr. S.S.Sidhu, Advocate for respondent Nos.2 to 6.

MANOJ BAJAJ, J.

Gurpyar Singh has filed this revision petition challenging the order dated 03.08.2016 passed by Additional Sessions Judge, Mansa whereby application dated 20.05.2016 (Annexure P-4) under Section 319 Cr.P.C for summoning Gamdoor Singh and Buta Singh, both sons of Bachan Singh; Babbi Singh @ Jaspreet Singh and Jaggi Singh both sons of Buta Singh and Gagandeep Singh son of Shingara Singh as additional accused in case FIR No.19 dated 16.04.2015 registered under Sections 302, 307, 341, 427 and 148 read with Section 149 of Indian Penal Code and Sections 25, 27, 54 and 59 of Arms Act at Police Station Jhunir was dismissed.

Upon statement of the petitioner it was informed to the Police that he solemnized a love marriage with deceased Simarjit Kaur d/o Gamdoor Singh on 28.09.2014. Simarjit Kaur was working as a teacher at

Government Primary School Sardulgarh and every day they use to go for job together from Fatta Maloka to Sardulgarh. On the day of occurrence i.e.16.04.2015 they were going on their duty on the motorcycle bearing No.PB 02 BH 9216 at about 7.45 a.m., a car came from the back side and hit their motorcycle and the couple fell down. Various others persons and accused also came from the petrol pump side and surrounded them. Makhan Singh was having pistol and he fired two shots at the victim, namely, Simarjit Kaur and someone gave blow with sharp edge on the back side of the complainant. After this occurrence all of them went away towards Sardulgarh. The motive behind this occurrence is honour killing as the accused persons were not happy with this marriage. Upon this, FIR was registered for various offences. After completion of evidence final report under Section 173 Cr.P.C was filed against Makhan Singh, Sukhwinder Singh @ Kala, Falel Singh and Jagtar Singh. After framing of the charges and commencement of trial, the complainant testified as PW-1 and the said statement echoes the version of the FIR. On the strength of his statement, the application was moved under Section 319 Cr.P.C for summoning respondent Nos.2 to 6 as additional accused to face trial along with those who were challaned by the Police.

Learned trial Court vide its order dated 03.08.2016 proceeded to dismiss the application. Challenging the order, learned counsel for the petitioner has argued that being an eyewitness the version put-forth by him could not have been discarded. The attention of the Court is invited to Annexure P-4 i.e. the application moved under Section 319 Cr.P.C for

summoning additional accused. It was pointed out that respondents No. 2 to 6 were named in the FIR, but they figured in Column No.2 in the challan. There is sufficient evidence to summon them as additional accused.

On the other hand learned counsel for respondents No.2 to 6 has submitted that order passed by trial Court is well reasoned and does not call for any interference.

I have heard learned counsel for the parties and have gone through the case file.

After examination of the application as well as the order impugned herein, this Court does not find any reason to set aside the same. The trial Court has considered the final report submitted under Section 173 Cr.P.C which indicated that respondents No.2 to 6 were not present at the time of occurrence at the spot. Reliance has been placed upon reports dated 26.05.2015 and 12.05.2015 indicating that persons sought for summoning additional accused were found to be in their respective villages. The tower location with regard to the mobile phone of Gagandeep Singh was also inquired into who was found to be in Ratia, District Fatehabad, Haryana. The trial Court has minutely discussed the important aspects of the case which indicates that the investigating agency did not find anything incriminating against these accused persons.

Learned counsel for respondents No.2 to 6 has further invited attention of the Court to the para 8 of the impugned order, wherein the statement of Amrik Singh (brother of petitioner) was discussed. In the statement of Amrik Singh, only four persons were named i.e. Makhan Singh,

Sukhwinder Singh @ Kala, Falel Singh and Jagtar Singh who were challaned by the Police in the final report. The trial Court has returned the finding that version given by the petitioner is exaggerated version and refused to summon the additional accused.

In “Hardeep Singh Vs. State of Punjab, 2014 (1) R.C.R. (Criminal) 623”, Hon'ble the Supreme Court has observed that discretionary powers under Section 319 Cr.P.C is to be exercised sparingly and in very strong case. The relevant observations are extracted below:-

“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 Civil Appeal No. 763 of 2017 Page 15 of 19 Page 16 ‘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.

In addition to the above, this Court has noticed the contents of the application dated 20.05.2016 (Annexure P-4) under Section 319 Cr.P.C, wherein there is no mention of any new evidence which came to the notice of the Court thereby compelling exercise of powers under Section 319 Cr.P.C. In the application, the only reference is to the version of the FIR and the challan which is not sufficient to invoke powers under Section 319 Cr.P.C. It is settled law that powers under Section 319 Cr.P.C. are to be exercised sparingly and rarely only in the case where new evidence has emerged during trial indicating involvement of any other person who has not been sent along with accused to face trial.

In view of the above, this Court does not find any reason to interfere with the impugned order dated 03.08.2016 as the same is passed on correct appreciation of the material before it and does not suffer from any illegality or error of law.

The petition stands dismissed.

17.11.2018

vanita

Whether speaking/reasoned :
Whether Reportable :

Yes
Yes

(MANOJ BAJAJ)
JUDGE

No
No