

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr.No.106

Criminal Revision No.87 of 2015(O & M)
Reserved on:29.08.2018
Date of Pronouncement:30.08.2018

Naseera

....petitioner

Versus

State of Haryana and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sarfraj Hussain, Advocate
for the petitioner

Mr.Naveen Sheoran, DAG Haryana

Mr.S.K.Bawa, Advocate
for respondents No.2 to 5

ARVIND SINGH SANGWAN, J. :

Prayer in this petition is for setting aside the order dated 18.11.2014 passed by Additional Sessions Judge, Nuh/trial Court, vide which the application filed by the petitioner under Section 319 of the Code of Criminal Procedure (for short, 'Cr.P.C.'), for summoning respondents No.2 to 5 as additional accused, was dismissed.

Brief facts of the case are that the petitioner/complainant got FIR No.13 dated 14.01.2011, under Sections 323, 325, 452, 506,

308, 34 IPC, registered at Police Station Punhana, against Majid son of Matin, Jabbir @ Killam son of Abdulla and respondents No.2 to 5 with the allegations that all the accused persons, on 06.01.2011, came to the house of the complainant and started abusing for raising construction over the house on the disputed land. When the accused persons were prevented from abusing, they caused injuries to the complainant as well as the other victims, with their respective weapons. The accused persons were medico legally examined on 06.01.2011 and thereafter, the FIR was registered on 14.01.2011.

Learned counsel for the petitioner has submitted that during the investigation, the police found respondents No.2 to 5 as innocent and submitted the report under Section 173 Cr.P.C. against the two accused persons, who are facing the trial.

Learned counsel for the petitioner further argued that after recording the statement of the complainant, an application under Section 319 Cr.P.C. was filed for summoning the private respondents as additional accused. However, the said application was dismissed by the trial Court. Therefore, the petitioner filed Criminal Revision No.4028 of 2013. The said revision petition was disposed of vide order dated 26.02.2014, granting liberty to the petitioner to take recourse under Section 319 Cr.P.C. at a later stage after recording the statement of the complainant and eye witness. It was directed that the trial Court will pass a fresh order on such application.

Learned counsel for the petitioner further submits that

thereafter, the petitioner has filed a second application under Section 319 Cr.P.C.praying for summoning of respondents No.2 to 5 namely Wahid, Rajjak, Matim and Kayyum, as additional accused. The trial Court vide impugned order dated 18.11.2014 has dismissed the application.

It is worth noticing here that this petition was listed on 15.01.2015 and passing of the final judgment was stayed.

Learned State counsel has informed the Court that even the statement of the accused under Section 313 Cr.P.C.has been recorded and the trial Court is awaiting the decision of the present revision.

Learned counsel for the petitioner has argued that it has come in the statement of Mohd.Ayyub-PW11 (an injured witness) that Wahid had given an axe blow on his head. It is further argued that similarly it has come in the statement of Tofiquan-PW5, that Matin gave *lathi* blow on his head and it has come in the statement of the petitioner-Naseera, who appeared as PW4 that Kayyum inflicted an iron rod blow on the head and lips of his son Ramjan.

Learned counsel for the petitioner submits that the injuries sustained by the victims is also reflected in their respective medico legal reports (MLRs) and the trial Court, while dismissing the application has not properly appreciated the statement of the prosecution witness.

In reply, learned State counsel, assisted by learned counsel for the accused/respondents No.2 to 5 has opposed the prayer on the

ground that during the investigation, respondents No.2 to 5 were found innocent and therefore no challan was presented against them. Learned counsel for the respondents have also argued that the statement of the prosecution witnesses is nothing but the reiteration of the statements given before the police and, therefore, no reliable evidence, which may lead to the conviction of respondents No.2 to 5, has come on record.

Learned counsel for the respondents have further argued that as per the statement of PW4-Naseera (petitioner), qua injury sustained by his son, at the hands of respondent Kayyum, the same does not correspond with the MLR of the said injured person. It is further argued that in the MLR of Naseera himself, there is no injury on his head as stated by him. It is further argued that though it is alleged that respondent Wahid had given axe blow on the chin of Ramjan but there is no injury reflecting an incised wound with a sharp edged weapon in the MLR of Ramjan and rather it is stated to be a blunt injury.

Learned counsel for the respondents have further submitted that since the trial has reached at the final stage and there is no convincing evidence on record to summon respondents No.2 to 5, the trial Court has rightly dismissed the application.

It would be appropriate to refer to the impugned order passed by the trial Court dismissing the application and the operative part of the same reads as under:

8. Before proceeding further, it would be relevant to reproduce the law laid down by Hon'ble Supreme Court of India in case titled as Hardeep Singh vs. State of Punjab & Ors., 2014(1) RCR (Criminal) 623, on the point of summoning of accused under Section 319 of the Code of Criminal Procedure, 1973. In para No.98 and 99 of the aforesaid judgment, Hon'ble Supreme Court of India has observed as under:

98. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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. Q.(v) In what situations can the power under this section be exercised: Not named in FIR; Named in the FIR but not charge-sheeted or has been discharged?

9.The ratio of the law laid down in the aforesaid authority is that power under Section 319 Cr.P.C. is discretionary as well as extra ordinary, which is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It has not to be exercised merely because that some other person may also be guilty of committing that offence. It is only where the strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised. It is also held in the aforesaid authority that 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.

10.The contention of learned counsel for the complainant Sh.Mohd.Ashraf, Advocate, is that Matin, Kayyum, Wahid and Rajjak were involved in the commission of offence and they have caused injuries to the complainant and his family members and they were actually involved in the occurrence and the allegations against them are specific. They have also been named along with other accused in the FIR. The prosecution has examined 11 witnesses, who have attributed specific roles to the aforesaid persons before the Court. It was, therefore, prayed that the aforesaid persons now named in the application be summoned as additional accused.

11.However, the contention of learned counsel for the complainant is not tenable despite the fact that the prosecution has examined 11 witnesses because Ramjan

(PW10) in his examination-in-chief has deposed that Wahid s/o Abdulla armed with axe reached on the spot and hit an axe on his chin. Similarly, Mohd.Ayyub s/o Nasira PW11 in his examination-in-chief has deposed that Wahid gave axe blow on his head. However, as per the deposition of Dr.Raman Kapil in his affidavit Ex.PC has not found any insized injury on the person of Ramjan, but has found lacerated wound of size 3 x 0.5 cm oval in shape irregular margin on left side of angle of mouth vertical in direction and fresh bleeding present. Similarly, Dr.Raman Kapil in his affidavit Ex.PC has not found any insized wound on the person of Ayyub. Had there been any injury with axe on the head of PW Ramjan and Ayyub, definitely there were would have been serious injuries on the head of Ramjan and Ayyub, but there is no such situation. Matin is alleged to have caused injury on the back of Ayyubn with Lathi. However, no injury even bruise has been reported on the back of Ayyub by Dr.Raman Kapil in his affidavit Ex.PC.

12.Further, the occurrence has taken place on 05.01.2012 but the FIR was got lodged only on 14.01.2011 i.e.after 9 days of occurrence. It is settled proposition of criminal law that more is the delay in lodging of the FIR more are the chances of implication of innocent persons. With so much lapse of time one can think with cool mind as to who are to be roped in the criminal case just to pressurise them to toe the line of the complainant. In this case, till date 11 witnesses have been examined and total witnesses are 11 i.e. all the witnesses have been examined.

13.Hence, in the considered opinion of this Court, the evidence on record does not satisfy the standard of being

more prima facie case against the additional accused to summon them to face trial along with co-accused. Therefore, the application, being devoid of merits, is dismissed.”

After hearing learned counsel for the parties, I find no merit in the present petition. The statement of three prosecution witnesses referred by learned counsel for the petitioner, is at variance with the respective injuries as reflected in their MLRs with the respective weapons and the attribution so made to Wahid, Matin and Kayyum, as discussed in detail by the trial Court. It is also apparent on record that the incident had taken place on 06.01.2011 and the FIR was registered on 14.01.2011, though the MLRs of the injured persons were prepared on 06.01.2011, and therefore, in the intervening period, the injured/victims had sufficient time to implicate respondents No.2 to 5 as well.

It is worth noticing here that neither the copy of the FIR nor the report under Section 173 Cr.P.C. has been placed on record by learned counsel for the petitioner, and, therefore, there is no challenge to the investigation conducted by the police, by which respondents No.2 to 5 were found innocent.

As noticed above, the trial pertains to the year 2011 and the impugned order was passed in the year 2014, and, thereafter, the prosecution has concluded the entire evidence and even the statements of the two accused persons under Section 313 Cr.P.C. have been recorded as stated by learned State counsel, on instructions from the

investigating officer.

Therefore, I find no ground to differ with the opinion of the trial Court given in the impugned order dated 18.11.2014, at this stage.

The petition stands dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

30.08.2018

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Whether speaking/reasoned:

Yes/No.

Whether reportable-

Yes/No