

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 2030 of 2017 (O&M)

Date of decision : 17.4.2018

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Bhupender

.....Petitioner

vs.

Karamvir Singh @ Paramvir Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Tapan Kumar Yadav, Advocate
for the petitioner.

Mr. Manoj Tanwar, Advocate for
respondents No. 1 and 2.

Mr. Gaurav Bansal, Assistant Advocate General,
Haryana for respondent No.3

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H. S. Madaan, J.

This revision petition is directed against order dated 16.5.2017 passed by Additional Sessions Judge, Narnaul, vide which an application under Section 319 Cr.P.C. filed by prosecution for summoning of Karamvir Singh @ Paramvir Singh, Vinod and Smt. Santosh, as additional accused had been declined.

Briefly stated, facts of the case as per prosecution version are that on 24.10.2016 Rajesh alongwith his two brothers and mother started digging the plot situated at village Nangal Harnath, adjoining

the shop-cum-residence of complainant Bhupender. The digging was being done with JCB machine for the purpose of construction of basement. Fearing that the deep digging might pose a danger to his shop-cum-residence, the complainant requested the accused not to do so, but in vain. The complainant informed the police. The JCB machine left at about 5.00 P.M. Thereafter Karambir, Vinod and Rajesh started removing the sand near foundation of shop-cum-residence of the complainant, as a result of which it collapsed. At about 7.15 P.M. accused sprinkled water in the plot. The family members of the complainant were taken out from debris with great difficulty. Gulshan, a nephew of the complainant died as a result of the injuries suffered by him, whereas other family members Sanjay and Rakesh Devi were referred to higher medical center after giving first aid. On the statement of the complainant Bhupender, formal FIR was registered. The matter was investigated. Thereafter, only Rajesh Kumar was challaned. Trial against him began, during the course of which an application under Section 319 Cr.P.C. was moved, which was however, declined by the trial Court vide order dated 16.5.2017. The said order left the complainant aggrieved and he has filed the present revision petition.

I have heard learned counsel for the petitioner, learned counsel for the respondents No. 1 and 2, learned State counsel for respondent No.3.

The trial Court while dismissing the application has observed that power under Section 311 Cr.P.C. which is extra ordinary in nature has to be exercised judiciously and most sparingly in order to

avoid injustice being caused to any person and a person cannot be summoned as an accused at the whims of the complainant. It has further been observed that as per the law laid down by the Apex Court, this power has to be exercised only if the evidence actually points the possible involvement of the person proposed to be prosecuted against. Further reasoning has been given in paragraphs 7, 8 and 9, which for ready reference are being reproduced as under :-

7. The Hon'ble apex court has time and again declared that discretion under section 319 Cr. PC has to be exercised very sparingly and with caution and only when the concerned court is satisfied that such offence has been committed by the person, this power has to be exercised only on the basis of evidence.
8. In the present case, no specific role has been attributed to the proposed accused either in the FIR or in the report *u/s* 173 Cr. PC. Even they were not present at the spot at the time of occurrence, because the occurrence took place after 5.00 p.m. When the JCB machine has gone after digging the land. In the considered opinion of this court, it does not appear from the evidence of PW1 complainant that the proposed accused were present at the time of occurrence, for which other accused is facing trial, because proposed accused have been found innocent after thorough investigation by the police

and they were exonerated. Moreso, in cross-examination PW1 stated that Karambir the brother of Rajesh is serving in National Security Guard at Manaser, District Gurgaon and before the collapse of their building, he had gone to sleep at their another shop. It means the occurrence took place at night, when he went to sleep, then how he can say at that time all the proposed accused were present. The testimony of PW1 reveals that there is improvement in the statement recorded in the court on oath, because the facts which he stated on oath are not mentioned in application Ex.PW1/A submitted by him to the police. Meaning thereby, the complainant tried to implicate all the family members in this case by making improvements in his statement recorded on oath in the court.

9. The power under Section 319 Cr.P.C. could therefore, be used only after the legal evidence comes on record and from that evidence, it appears that the concerned person has committed the offence, but there is lacking of such evidence. The facts of this case are also clearly covered by the law laid down by Hon'ble Apex Court in case *Kailash (Supra)*, which fully applicable to the facts of the case as well as law laid down in case *Annamma (Supra)*.

I find that the trial Court has exercised the discretion vested in it in a proper and judicious manner and there is no element of arbitrariness found in the order. Therefore, I do not find any illegality or infirmity with the order under revision which might have called for interference by this Court, while exercising revisional jurisdiction. It is well settled that scope of revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the order under challenge. This is not the case here.

The revision petition is found to be without any merit and is dismissed accordingly.

17.4.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No