

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 3558 of 2017 (O&M)

Date of Decision: 29.10.2018

Ramphal

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Pratham Sethi, Advocate
for the petitioner.

Mr. Amrik Narwal, DAG, Haryana.

Mr. Amit Kohar, Advocate
for respondents no. 2 to. 5

SURINDER GUPTA, J.

This is revision against order dated 24.04.2017, whereby application filed by the prosecution under Section 319 Cr.P.C. to summon respondents no. 2 to 5 as additional accused was ordered to be dismissed.

2. FIR No. 611 dated 25.06.2015 was registered on the statement of Ramphal son of Sher Singh (petitioner), wherein he stated that on that day at about 5.30 a.m., he was going on his motorcycle for his duty. When he reached near Balaji Petrol Pump, Hisar-Barwala road, he saw Rameshwar son of Bholaram, Karambir and Sonu sons of Rameshwar, Sishan, Pawan, Parveen sons of Mahabir armed with *lathi*, *danda*, rod, *gandasi* etc. giving beatings to his brother, namely, Balwant. He stopped the motorcycle and rushed to save his brother at which all the accused ran away from the spot on their motorcycles. Balwant was taken to hospital but later on he succumbed to injuries suffered by him.

namely, Parveen and Sonu @ Bijender while other persons named in the FIR were found innocent.

4. After presentation of challan, charge for offence punishable under Section 302 read with Section 34 of Indian Penal Code (for short 'IPC') was framed against accused, Parveen and Sonu @ Bijender vide order dated 02.11.2015. Statement of petitioner as PW-5 was recorded on 21.07.2016, wherein he reiterated his version on the basis of which FIR was registered. His cross-examination was deferred as learned P.P. for the State moved application under Section 319 Cr.P.C. for summoning of respondents no. 2 to 5 as additional accused.

5. Learned trial Court declined application with the observation that no new fact has come on record to suggest that investigation conducted by the police with regard to innocence of respondents no. 2 to 5 was false.

6. Learned counsel for the petitioner has argued that learned trial Court while passing impugned order was swayed by the notion that additional accused can be summoned only if the evidence on record is sufficient to record their conviction. Learned trial Court as per observations of Hon'ble Apex Court in case of **Hardeep Singh vs. State of Punjab (2014) 3 SCC 92** was only required to find as to whether *prima facie* case is made out against respondents no. 2 to 5 so as to summon them as additional accused. They were named by the petitioner in the FIR and also while appearing as PW-5 and there was no reason to discard his statement at this stage.

7. In his statement as PW-5, petitioner has not brought on record any new fact and the same is reiteration of his submission before the police.

During investigation, the police has also recorded statement of many

witnesses and has also verified facts of the case from various sources and found that Balwant was caused injuries by Parveen and Sonu @ Bijender and respondents no. 2 to 5 have been falsely implicated. The reason for their implication is implicit from the testimony of petitioner himself, who has stated that even in earlier criminal case regarding which FIR and cross-version case have been registered by the police, six persons named in this FIR were named as accused while on the other hand petitioner and certain other persons were named as accused in cross-version case. This shows that the parties had previous enmity and reason to name all the persons of opposite group in an incident. This had put the investigating officer to caution and to be careful while verifying the veracity of the statement of complainant (petitioner). Earlier FIR No. 381 dated 02.05.2015 was registered against Rameshwar and others for causing injuries to Khem Chand, his uncle Ishwar Singh and Ram Singh on 01.05.2015, while FIR No. 417 dated 12.05.2015 was registered regarding the same incident on the statement of Rameshwar against Ramphal (petitioner) and some other persons of his party for causing injuries to them. As per report of Deputy Commissioner of Police, Hisar dated 25.08.2015, he had conducted detailed investigation before concluding that no evidence could be found for involvement of respondents no. 2 to 5 in the incident.

8. The question, which arises for consideration is as to whether solitary statement of petitioner recorded by the Court was sufficient to make out a strong case for summoning of respondents no. 2 to 5 as additional accused.

9. Before proceeding further, I agree with learned counsel for the petitioner that to summon the additional accused it is not required that the

evidence on file should be of such nature which should be sufficient to record his/their conviction. In case of **Hardeep Singh (supra)**, Hon'ble Apex Court while laying down law in this regard has observed that “under Section 319 Cr.P.C. though the test of *prima facie* case is the same, the degree of satisfaction that is required is much stricter.” After discussing the law on the point, Hon'ble Constitution Bench has observed in para 106 as follows:-

“106. 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.”

10. It is a settled proposition of law that power under Section 319 Cr.P.C. is an extraordinary power, which is to be used sparingly and with great caution only if compelling reasons are there. On the basis of vague and general allegations or casual statement of the witness, a person cannot be summoned to face trial. The Court can order summoning of additional accused if evidence on record is strong, cogent and make out a *prima facie* case indicating the involvement of the person sought to be summoned as additional accused in the crime. In this case, the police after due investigation has found the allegations levelled against respondents no. 2 to 5 as not correct. The petitioner has reiterated same statement before the trial Court while appearing as PW-5, as such, no other evidence was produced regarding the involvement of respondents no. 2 to 5 in the crime. Statement of petitioner also indicates a motive over implication of respondents no. 2 to 5 due to previous enmity between the parties.

11. Keeping in view above facts, I find no reason to interfere with impugned order passed by the trial Court declining to summon respondents no. 2 to 5 as additional accused at this stage.

12. This petition has no merit and the same is dismissed.

October 29, 2018

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No