

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl. Revision No.3830 of 2017

Date of Decision: 04.05.2018

Prince Bajaj

...Petitioner

Versus

State of Punjab and another

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. R.S. Bains, Advocate, for the petitioner.

Ms. Monika Jalota, DAG, Punjab.

Amol Rattan Singh, J. (Oral)

The present revision petition has been filed for setting aside the order dated 12.07.2017, passed by learned Additional Sessions Judge, Fatehgarh Sahib, whereby an application under Section 319 Cr.PC., filed by the State to summon the petitioner, Prince Bajaj, as an additional accused to face the trial, has been allowed.

The facts of the case (as per the prosecution), are that on 28.04.2013, a police party was present at Bus Stand, Nabipur, on patrolling duty. The police are stated to have seen one motorcycle driven by a clean shaven person, with one 'Sikh gentleman' sitting on the rear seat, both of whom tried to turn back after seeing the police. Upon suspicion, both persons were apprehended and upon their search, 40 strips of Diatil are stated to have been recovered from the pocket of the petitioner, with the same recovery also effected from his co-accused, i.e. Kulwinder Singh @ Kinda.

One Jitender Kumar, i.e. the brother of the petitioner, moved an

application before the Senior Superintendent of Police, Fatehgarh Sahib, stating therein that his brother (the petitioner) is innocent, and that on the date of occurrence, the petitioner had come to the Gurudwara to pay obeisance and on the way, the co-accused had sought a lift on his motorcycle; and upon seeing the police, he had inserted some substance in the pocket of the pant of his brother (the petitioner).

The Senior Superintendent of Police had got conducted a detailed enquiry and found that the petitioner is innocent. In the enquiry report it was also stated by the Superintendent of Police (Detective), that the substance belonged to the co-accused of the petitioner, Kulwinder Singh @ Kinda, who had sought a lift on the motorcycle, and that the petitioner was not even known to him. A copy of the enquiry report has been annexed as Annexure P-2 with the petition.

Thereafter, a 'challan' was presented before the trial Court against Kulwinder Singh @ Kinda (co-accused of the petitioner), and the petitioner was kept in 'column no. 2'.

However, when the Investigating Officer appeared to testify before the trial Court as PW-1, he reiterated the whole story of the FIR in his statement.

On the basis of the aforesaid statement of the Investigating Officer, the prosecution moved an application under Section 319 Cr.P.C. to summon the petitioner as an additional accused, for facing trial. The trial Court, upon considering it, has allowed the same and summoned the

petitioner as an additional accused.

Before this Court, Mr. Bains, learned counsel for the petitioner, again reiterates what he had submitted at the time when notice was issued on 30.01.2018, to the effect that the petitioner was riding a motorcycle, on which Kulwinder Singh (the person who has been arraigned as an accused in the report filed under Section 173(2) Cr.P.C. before the trial Court), took a lift from him, and when the police party stopped them, Kulwinder Singh tried to insert contraband into the pocket of the petitioner, as was also found in the enquiry conducted by the Superintendent of Police (Detective), with the village 'Panchayat' having approached the Senior Superintendent of Police in support of the petitioners' innocence.

Though on an earlier date this Court had expressed its doubt with regard to somebody trying to push any contraband into somebody else's pocket, Mr. Bains today further points to the enquiry report, Annexure P-2, (submitted by the Superintendent of Police (D), Fatehgarh Sahib), to the Senior Superintendent of Police, Fatehgarh Sahib, wherein it has been recorded that in the investigation it came out that the marriage of the petitioner was fixed for 13.05.2013 and he had taken a 'vow' that he would go to the Gurudwara Sahib at Fatehgarh Sahib to pay obeisance, and when he arrived just ahead of Rajpura, then one 'Sikh person' took a lift from him to go to Fatehgarh Sahib, and when they reached at the Bus-Stand Nabipur, where a police barricade was set up, the aforesaid person who had taken a lift (Kulwinder Singh @ Kinda) to save himself, inserted a packet of 40

tablets in the pocket of the 'pant' of the petitioner, who actually does not know the aforesaid Kulwinder Singh.

It has been further stated in the report that during investigation, it has come out that the petitioner, Prince Bajaj, “is simple kind of person from mind”. As per the Punjabi version of the report, which is also annexed with the petition, the words used are “*doraane pardtal ehh gal bhi sahmane aayi hai ki Prince Bajaj dimagi tor teh thoda Saadharan Kisam da vyakti hai*”.

The report of the Superintendent of Police (Detective) further states that during investigation, the investigating officer, before registration of the case, should have clarified as to what kind of relationship existed between the petitioner and the aforesaid Kulwinder Singh; and therefore in fact, Head Constable Harminder Singh, i.e. the investigating officer, had not conducted a proper enquiry.

Eventually the report concludes that the petitioner is a simple minded person who was even deceived by Kulwinder Singh.

Mr. Bains further refers to the judgment of the Constitution Bench of the Supreme Court in Hardeep Singh v. State of Punjab, 2014(3) SCC 92, wherein as regards the degree of satisfaction required in the mind of the trial court before summoning a person on an application filed under Section 319 Cr.P.C., it has been held 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."

And further, while concluding, it was held as follows:-

"117.5 Though under Section 319(4) (b) Cr.P.C., the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial-therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different."

Considering the above, in the opinion of this Court, it was incumbent upon the trial Court to at least refer to the reasoning given in the report submitted under Section 173 (2) Cr.P.C., and to further call for the report of the SP, on the basis of which the reasoning was given, before summoning the petitioner on the application moved under Section 319 Cr.P.C. However, the learned trial Court has, after reiterating the case depicted in the FIR, held as under:-

“5. It is abundantly clear from the record that this is not a case where complicity of the proposed accused has surfaced for the first time in the statement of the prosecution witness recorded on trial. Rather the involvement of Prince Bajaj was writ large right from the very first day when the criminal (sic) rolled into motion on the registration of the FIR. Alleged recovery has been effected from him at the spot. This Court is unable to comprehend as to what circumstances played with the investigating agency when the SHO did not recommend the trial of accused Prince Bajaj when he had been arrested by the investigating officer at the spot. No clean chit could be given to him otherwise than testing his involvement, on trial by the Court.

6. Keeping in view all the circumstances, this Court is of the confirmed and considered view that there is sufficient evidence on record to spell out the complicity and involvement of Prince Bajaj in the occurrence in question. The circumstances are fit to employ the provisions of Section 319 of the Cr.P.C. to summon Prince Bajaj as a co-accused to face trial with accused Kulwinder Singh.”

Other than the above, the statement of ASI Harminder Singh as PW1 has also been referred to by that Court in paragraph 4, which as per the

impugned order, is to the effect that the said statement is in accordance with the prosecution story from the “first date of the inception of the case”.

In the opinion of this Court, a specific finding having been arrived at by the investigating agency to the effect that the petitioner is a “simple minded person” who was taken advantage of by Kulwinder Singh, who has been arraigned as the prime accused in the report filed under Section 173(2) Cr.P.C., and the degree of satisfaction to be recorded by the trial Court at the stage of summoning a person under Section 319 Cr.P.c. to be far higher than at the time of framing a charge, that aspect should have been gone into by that Court.

Consequently, the petition is allowed and the impugned order dated 12.07.2017 is quashed.

The matter is remitted to the trial Court to go into all aspects of the matter before issuing summons to the petitioner, keeping in mind the fact that the petitioner has been described as a simple minded person, which finding seems to have been arrived at by the Superintendent of Police (Detective) on the basis of the statements made by various respectables of the village of the petitioner. That aspect would be gone into thoroughly by the trial court, by even, if necessary, getting the petitioner eventually examined from a Psychiatry Department of a competent Government Hospital, where a Board of Doctors would assess the nature of his mental state.

However, such medical examination would be necessary only if

the trial court is not convinced otherwise of the mental condition of the petitioner, on the basis of the material before it.

(AMOL RATTAN SINGH)
JUDGE

04.05.2018
nitin/vcgarg

Whether reasoned/speaking: Yes

Whether reportable: no