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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRR-3907-2017 (O&M)
Date of decision: 28.09.2018**

Jagseer Singh @ Seera

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Bikramjeet Singh Jatana, Advocate
for the petitioner.

Mr. Harpreet Multani, AAG, Haryana.

Mr. M.S. Uppal, Advocate
for respondent No. 2.

RAMENDRA JAIN, J. (ORAL)

Through this revision, the petitioner has challenged order dated 27.09.2017 of the trial Court, whereby the application filed by the State under Section 319 Cr.P.C. to summon respondent No. 2 as additional accused was dismissed.

Briefly, respondent No. 2 and his son Baru Singh were booked vide FIR No. 12 dated 11.02.2017 under Sections 302/34 IPC for causing death of Bogha Singh. During investigation, respondent No. 2 was found innocent. Therefore, final report under Section 173(2) Cr.P.C. was filed under Section 302 IPC only against Baru Singh and he was charge sheeted accordingly.

Immediately, after examination of PW1-Jagseer Singh @

Seera, prosecution moved application under Section 319 Cr.P.C. for summoning respondent No. 2, as additional accused to face trial.

Hearing both the sides, the trial Court dismissed the said application vide impugned order dated 27.09.2017.

Learned counsel for the petitioner contends that the alleged contradiction on the basis of which application under Section 319 Cr.P.C. of the prosecution has been dismissed is, in fact, no contradiction in the eyes of law inasmuch as Court is not required to look into the merits of the case, rather has only to find out as to whether, the alleged offence has been made out against the person sought to be summoned as an additional accused. In support of his arguments, he placed reliance upon the judgment of the Hon'ble Supreme Court in ***Hardeep Singh Versus Sate of Punjab and others, 2014 (3) SCC 92.***

On the other hand, learned counsel for respondent No. 2 has vehemently opposed the above contentions, submitting that the trial Court on finding major contradiction in between initial version of the complainant and his statement as PW-1/A recorded in Court and thereafter satisfying itself, has rightly dismissed the application of the prosecution. Therefore, no interference is warranted in the impugned order.

Having given thoughtful consideration to submissions raised by both the sides, this Court finds instant revision completely devoid of any merits for the reasons to follow:-

1. The statement of Jagseer Singh @ Seera, was

recorded on 11.02.2017 which culminated into FIR against respondent No. 2 and his son Baru Singh for the death of Bogha Singh. However, during investigation, respondent No. 2 was not found present on the spot at the time of occurrence, therefore, SHO, Police Station Baretta on 11.02.2017 made endorsement to this effect, consequently respondent No. 2 was placed in column No. 2 as innocent of the final report under Section 173 (2) Cr.P.C.

2. Deceased Bhoga Singh in his statement before his death did not speak about the presence of respondent No. 2 at the spot along with his son. He, in specific words, had narrated to the police that Baru Singh s/o Ghuman Singh (respondent No. 2) started beating him with stick when he was working in his fields in the morning of 11.02.2017.

3. Contrary to it, complainant Jagseer as PW-1 attributed a lalkara to respondent No. 2. But the same is contradictory to his statement to the police which culminated into FIR inasmuch as he did not state so.

4. Petitioner as PW-1 testified that Baru Singh had given stick blows to his deceased father on his head, shoulder, stomach and back. Whereas, in the postmortem report, only one injury on right shoulder of

Bhoga Singh has been shown. Therefore, again there is major contradiction in the prosecution story.

5. In cross-examination, petitioner categorically admitted that in his statement Ex. PW1/A that he did not mention about caring of internal injuries by respondent No. 2 along with his son to his deceased father Bhoga Singh. He also admitted that in this statement before police under Section 161 Cr.P.C., he never got mentioned that Baru Singh has confessed before police to have killed Bhoga Singh with his father Ghuman Singh by inflicting head injuries.

6. Considering the factual aspect of the case, it is evident that deposing about involvement of respondent No. 2 by petitioner as PW-1 is an improvement and afterthought.

7. The ruling referred by the learned counsel for the petitioner, ***Hardeep Singh's case (supra)***, helps respondents inasmuch as it has been held therein that provisions of Section 319 Cr.P.C., being extraordinary in nature, have to be used sparingly not in a routine manner.

8. In the instant case, the court after thoroughly going through the statements of the petitioner, satisfied itself. Respondent No. 2 was not present at the time of alleged

occurrence and thereafter only dismissed the application.

In view of the discussion above, this revision is dismissed.

28th September, 2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No