

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

CRR no. 4211 of 2017

Date of Decision: 02.07.2018

Harpreet Singh alias Happy and another

....Petitioners

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Gautam Dutt, Advocate,
for the petitioners.

Mr. Surender Singh, AAG, Haryana.

Mr. Partap Singh, Advocate,
for respondent no.2.

Amol Rattan Singh, J.

By this petition, the two petitioners seek setting aside of the order of the learned trial Court (Additional Sessions Judge, Karnal), dated 14.09.2017, vide which the petitioners have been summoned as 'additional accused' upon an application filed by the complainant (in the FIR), under Section 319 of the Cr.P.C., seeking that they be so summoned.

Prior to the order now impugned before this Court, a similar order dated 24.10.2016 was passed by the learned trial Court, that came to be challenged before this Court by way of Criminal Revision no.4489 of 2016, which was allowed by this Court (a co-ordinate Bench), vide its order dated August 29, 2017, thereby setting aside that order of the trial Court dated 24.10.2016, further directing that Court to hear the parties afresh and decide

the application (under Section 319 Cr.P.C.), giving proper reasoning.

Thus, it is thereafter that the impugned order has been passed, again summoning the petitioners to face trial in criminal proceedings emanating from the registration of FIR no.958, dated 01.12.2015, at Police Station Civil Line, Karnal, alleging therein the commission of offences punishable under Sections 148, 149, 302 and 506 IPC.

2. As per the FIR, registered at the instance of one Savita (the applicant in the application filed under Section 319 Cr.P.C.), on the evening of 30.11.2015, she left her house alongwith her husband Sanjay, one Balinder son of Malkhan Singh and Manoj son of Prem Singh, in a car bearing registration no.HR-20-AE-1068.

As per the complainant, she had dropped off her husband and Balinder at a gymnasium situated in the Model Town Market at Karnal, after which she went to the market with Manoj.

At about 6:15 p.m., when she and Manoj were returning and had reached near the gymnasium, her husband and Balinder were seen coming down stairs with Vicky son of Roshan Lal, Rajesh son of Phool Singh, both armed with swords. Another Balinder and Bajinder, Rajbir, Mannu @ Ashok, as also the present two petitioners, i.e. Harpreet Singh @ Happy and Roshan, were also stated to be present alongwith 10 or 12 other young boys, all armed with iron rods.

They are all stated to have surrounded the complainants' husband (Sanjay), with one Vicky exhorting them to not allow Sanjay to escape and that he be killed.

Further as per the FIR, Rajesh and Vicky gave sword blows on the head of Sanjay, with the remaining accused causing multiple injuries on

him with their iron rods.

Upon the complainant, Balinder and Manoj having cried for help, and upon them proceeding to rescue Sanjay, accused Balinder and the present two petitioners are alleged to have 'proclaimed' that if they tried to interfere, they "would also be finished".

Allegedly, another unknown boy was also inflicted injuries by the accused party while leaving the spot.

Sanjay having been taken to the Government Hospital, Karnal, he was medico-legally examined, after which he was taken to the Virk Hospital at Karnal, from where he was shifted to the Fortis Hospital at Mohali, where he succumbed to his injuries.

3. After investigation, the police submitted its report under Section 173 Cr.P.C., declaring the present petitioners to be innocent. However, after framing of the charge, the complainant, Savita, having been examined alongwith Manoj (as PWs1 and 2 respectively), the application under Section 319 Cr. P.C. was filed, seeking to summon the present two petitioners as 'additional accused'.

4. As already noticed hereinabove, the trial Court had earlier vide its order dated 24.10.2016 allowed the application after referring to judgments of the Supreme Court in **Sunil Bharti Mittal v. Central Bureau of Investigation** 2015 (2) RCR (SC) 1 and **Babubhai Bhimabhai Bokhiria and another v. State of Gujarat and others** 2014 (2) Apex Court Judgments (SC) 268, holding that the test to be applied for summoning any person upon an application made under Section 319 Cr. P.C, would be that more than a *prima-facie* case is made out, than as existed at the time of framing of the charge.

Thus, as per that Court, it was justified in summoning the present two petitioners as additional accused.

5. When that order came to be challenged by way of CRR no.4489 of 2016, this Court (co-ordinate Bench) allowed that petition, by noticing the contention raised before the trial Court by the Public Prosecutor, as recorded in paragraph 6 of that Courts' order (dated 24.10.2016):-

“.....But police did not take into account this important fact that these persons were also involved in the murder of Sanjay. Police on the basis of so called telephonic details of both these persons exonerated them for the offences in question. The distance of location, shown in mobile of both Roshan and Harpreet, was within 10 Kms area, which could have been easily managed by them for escaping from their liability of grievous offences in question. Moreover, mentioning of Manoj Kumar as witness of inquest proceedings does not exonerate them from the offences in question because in general, police obtains signatures on blank papers from the persons, available on the spot, even at later stage and that is why statement, recorded under Section 175 Cr. P.C. of Manoj Kumar, cannot be relied upon.....”

Thereafter, the revision petition was disposed of by this Court, holding as follows:-

“Learned Senior counsel for the petitioners contended that looking to the above part of the order, one would have (sic) impression as to what is passing in the mind of the learned judge, namely, prejudice. Having regard to the above observations and the stage at which, the case is being heard, I think, the trial Court should not have used the words, viz. “so called telephonic details”, location could have been easily managed by them”, comments about witness Manoj Kumar or police taking signatures on blank papers. In appropriate case, where there is evidence on record in trial to the satisfaction of the trial judge,

after undergoing the test of cross-examination, the judge would be justified in making such observations, but then that should be after a full dressed trial. I do not think it was justifiable for the learned trial Judge to make above observations, which definitely can give rise to the impression in the mind of a person about what is passing in the mind of the judge writing the order. After all, fair play is the hallmark of the judicial proceedings, which should also be appear from the orders or the judgment. I think, in that view of the matter, it would be appropriate to ask the learned trial Judge to hear the learned counsel for the rival parties and thereafter, make a fresh order. The trial Court need not take this Court's observation above as criticism but an advice.

In that view of the matter, impugned order dated 24.10.2016, in Sessions Case No.9 of 2016, is quashed and set aside with a direction to the trial Court to hear rival parties and decide the application under Section 319 of Code of Criminal Procedure, 1973 afresh with proper reasons. The application in question shall be taken up for hearing within 15 days from today and shall be decide, thereafter, in the next 15 days. No further time will be granted. Petition stands disposed of, accordingly.”

6. Thereafter the impugned order came to be passed, reiterating the summons issued to the petitioners for appearing as 'additional accused' before that Court, with the trial Court holding as follows:-

“9. It is pertinent to mention here that just after this incident, injured was taken to General Hospital, where from he was referred to Fortis Hospital at Mohali, but despite best efforts made by complainant life of Sanjay could not be saved. Now question is whether statements recorded by police under Section 161 Cr.P.C. during course of investigation keeps more weightage or statements recorded by police during inquest proceedings under Section 175 Cr.P.C. Certainly proceedings accomplished under Section 174 Cr.P.C. keeps signature/thumb impression of

the persons, who joined those proceedings, but sanctity, in the opinion of this Court is more of the statement recorded under Section 161 Cr.P.C., because statement under Section 161 Cr.P.C. is integral part of the investigation. During investigation proceedings, statements recorded by Investigating Officer are put up before Magistrate for perusal and same is to be signed. Moreover how police proceedings can be relied upon and seem to be free from doubt when it recorded different stories on the same day under Section 174 Cr.P.C. and under Section 161 Cr.P.C. in juxtapose to each other. Statements of witnesses recorded under Section 161 Cr.P.C. also pertains to 01.12.2015 and inquest proceedings under Section 174 Cr.P.C. also pertains to 01.12.2015. On the same day, both persons mentioned in the application have been shown to be innocent persons, while on the same day, police claimed them to be the persons who committed offence by recording statements under Section 161 Cr.P.C. Certainly, it was the discretion of police to give clearance certificate to these persons by molding case in favour of persons mentioned in the application. While on the same day, as it is crystal clear that accused not only participated in the incident wherein deceased suffered indiscriminate injuries, but they also acted as watchdog. Thus, in the opinion of this Court, statement recorded by police during course of investigation under Section 161 Cr.P.C. makes the case of prosecution crystal clear, leading to the conclusion that accused were involved in offence.

10. It was vehemently argued by defence counsel that Roshan and Harpreet alias Happy were at quite distance from the place where occurrence took place and the same is reflecting from their telephone/mobile location. At this state, this fact cannot be ascertained accurately because this important fact would be ascertained after evidence would be brought before Court. I agree with the contention of learned Public Prosecutor on the issue that assailants could have conveyed their mobile under a conspiracy for showing their presence at some other place. I do not see any substance in the arguments of learned defence counsel that had

their been any conspiracy of all accused in this regard, then the other co-accused might also have shifted their mobiles to different locations because detail and location of other co-accused have not been brought before the Court for showing their location. Court cannot forget this important fact in today's society generally people keeps more than one mobile, so it cannot be ruled out that persons mentioned in the application should have been using other mobile numbers. During course of investigation, police did not took affidavit from accused in question that they were using only one mobile at the juncture when offence was committed.”

Having observed as above, the trial Court went on to cite from various judgments of this Court and the Supreme Court to eventually hold as follows:-

“12. In the present case there has been active participation of both accused as per contents of FIR. Complainant stepped into the witness box as PW1 and her testimony is in consonance with the contents of complaint Ex.P1. Moreover, her testimony after stepping into the witness box is same what was before police. However, case of prosecution is beyond this as another eye witness of the incident namely Manoj stepped into the witness box as PW2 and corroborated the testimony of PW1. Thus, in the opinion of Court, case of prosecution keeps substance that prosecution has succeeded in establishing its case that evidence/material brought before the Court by prosecution agency is higher than the evidence which is required for framing of charge against the accused. In the opinion of this Court the specific and active participation of both Roshan and Harpreet Singh alias Happy in the offence/incident in question, which is fortified by testimony of PW1 and further corroborated by testimony of PW2 is sufficient for reaching at a conclusion that both these accused were involved in the incident, wherein deceased Sanjay lost his life. This evidence is above the

evidence, which is required for framing of charge. Hence, application filed by prosecution for summoning of Roshan Lal and Harpreet Singh alias Happy as additional accused for commission of offences punishable under Sections 302/149, 148/149 and 506, part (ii)/149 of Indian Penal Code is hereby allowed. The application stands disposed of accordingly.”

7. Before this Court, Mr. Gautam Dutt, learned counsel for the petitioners, cited a judgment of the Supreme Court in **Brijendra Singh and others v. State of Rajasthan**, 2017 (3) RCR (CrL.) 374, wherein, while referring to the principles laid down by the Constitution Bench in **Hardeep Singh v. State of Punjab**, 2014 (3) SCC 92, it was held (in the context of that case), that the trial court simply on the basis of the deposition of the complainant and some other persons in their examination-in-chief, with no other material to support the so-called verbal/ocular version, supported simply by the statements recorded under Section 161 Cr.P.C., was duty bound at least to look into the same before forming a prima facie opinion to see “whether much stronger evidence than the mere possibility of the complicity of the accused (as was summoned under Section 319 Cr.P.C.) had come on record”.

Mr.Dutt also, naturally, relied upon the principles laid down in *Hardeep Singhs'* case.

He submitted that, therefore, the trial Court wholly erred in summoning the petitioners, without actually taking into account what this Court had already held while allowing the previous revision petition filed by the petitioners (CRR no.4489 of 2016); and consequently, the impugned order deserves to be quashed.

He also pointed out from the impugned order, the argument raised before the trial Court to the effect that as per the statements recorded by

the police under Section 175 Cr.P.C., it had become evident that the prosecution witnesses came to know of the death of Sanjay only the next day, and therefore, though a statement made under Section 175 Cr.P.C. carries far more weight than a statement recorded under Section 161 Cr.P.C., the trial Court wholly erred in appreciating that fact.

8. *Per contra*, Mr. Partap Singh, learned counsel for the complainant, as also Mr. Surender Singh, learned Assistant Advocate General, Haryana, again referred to *Hardeep Singhs'* case itself, to submit that the trial Court would be within its jurisdiction to summon an accused on an application moved under Section 319 Cr.P.C., on the basis of material coming before that Court in the course of 'enquiries', as such enquiries also come within the ambit of the word evidence, in terms of the said provision (Section 319).

They also pointed to the argument raised before the trial Court by the Public Prosecutor, to the effect that the telephone location of the present petitioners was not sufficient criterion for ascertaining their actual location, because such location as regards petitioner no.1 (Harpreet Singh @ Happy) was shown to be near the Bastara Toll Plaza, with the location of petitioner no.2 herein being near Sector-4, Karnal, and that ordinarily telephonic locations can even cover upto about 5 kms.

The Public Prosecutor is further seen to have argued before the trial Court that if there was substance in the contentions raised on behalf of the petitioners, they would have produced before the trial Court, CCTV footage of the Bastara Toll Plaza.

(The arguments referred to by both sides are contained in paragraphs 7 and 6 respectively of the impugned order).

Both, learned counsel for the State and the complainant, therefore submitted that with the petitioners having been specifically named in the FIR itself, attributing a role to them of inflicting injuries upon the deceased with iron rods, and the stage of the trial being only at summoning the accused, the degree of evidence to be seen at that stage is only just above that which is to be seen at the time of framing of a charge.

9. Having considered the arguments on both sides, it is first to be seen that the learned trial Court has noticed that the statements recorded by the police under Sections 174/175 and 161 Cr.P.C. are both on the same date, i.e. 01.12.2015, with the statements recorded under Section 161 Cr.P.C. showing the petitioners herein to be both involved in the commission of the offence, but with the statements recorded in the course of inquest proceedings, showing that they were innocent.

Further, even while observing that reiteration by the complainant during testimony, of what is recorded in the complaint/FIR, is not enough for summoning of an accused under Section 319 Cr.P.C., the trial Court still went on to notice the contradictory statements recorded under Sections 161 and 174/175 Cr.P.C., thereafter holding that in view of the fact that both, the complainant and the eye witness to the incident, Manoj, had corroborated each other as regards the role of the present petitioners, there was sufficient reason to show that they had participated in the occurrence and therefore were required to be summoned as accused.

10. It needs to be noticed at this stage itself that the trial Court has, in fact, expressed its opinion that they are actually involved in the commission of the offence.

11. Though in my opinion learned counsel for the State and the

complainant (before this Court) are correct in submitting that the trial Court has not erred in summoning the petitioners in the aforesaid circumstances, what however further needs to be seen at this stage, is whether what has been stated by this Court in the earlier revision petition filed by the petitioners, has been considered by the trial Court or not, while passing the impugned order the second time around.

12. What this Court had observed (as already reproduced hereinabove) is that it comes across that the learned trial Judge was prejudiced while summoning the petitioners, as it should not have used words like “so called telephonic details”, and “location could have been easily managed by them”. It had also been observed that no comments should have been made by the trial Court as regards witness Manoj, nor about the police taking signatures on blank papers.

It had further been observed by this Court that if any such comments were to be made it would be at the stage of writing the judgment on conclusion of the trial, but not at a stage of summoning a person as an 'additional accused' on an application filed under Section 319 Cr.P.C. Consequently the previous order dated 24.10.2016 had been set aside, with the trial Court directed to decide the application afresh.

13. Despite that, it is seen that by using phrases such as “in the opinion of this Court the specific and active participation of both Roshan and Harpreet Singh alias Happy in the offence/incident in question, which is fortified by testimony of PW1 and further corroborated by testimony of PW2 is sufficient for reaching at a conclusion that both these accused were involved in the incident, wherein deceased Sanjay lost his life”, the trial Court has again committed the same error that it did while passing the order dated

24.10.2016, i.e. it has actually expressed its opinion that both the petitioners herein were “involved in the incident”, whereas, at best it should have been recorded, while concluding the aforesaid sentence, that both the accused being involved in the incident could not be ruled out and therefore they were required to be summoned to be tried alongwith others already arraigned as accused.

14. Other than that however, I do not see any error in the impugned order, in actually summoning the petitioners as additional accused, not only because the complainant and another person who are stated to be eye witnesses to the occurrence, i.e. PW1 & PW2, both reiterated in their testimonies that the petitioners were also those who had attacked the deceased, but also because there are stated to be contradictions (as per the order of the trial Court) in the statements shown to be recorded under Sections 174/175 Cr.P.C. and Section 161 Cr.P.C.

15. It is also necessary, before deciding the case, to refer to the judgment of the Constitution Bench in Hardeep Singh v. State of Punjab and others (2014) 3 SCC 92 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 unrebutted, 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.”

(Emphasis applied by this Court)

16. When tested on the anvil of what has been held as above [in reply to the question framed by their Lordships on the degree of satisfaction required for invoking jurisdiction under Section 319 Cr.P.C. (question no.iv)], it would be obvious that while issuing the impugned order, the learned trial Court gave good reasoning to hold that there was more than 'just a prima-facie' case against the petitioners herein, with in fact that Court going beyond even recording that degree of satisfaction, and instead stating that they were actually “involved in the incident”.

Whereas that, as already observed hereinabove (in para 13), was obviously not proper at the stage of summoning, however, that Court also noticed that there were contradictions in the statements recorded under Sections 174 and 161 Cr.P.C. by the police (both recorded on the same date). Further, that Court also opined that simply the presence of mobile phones at a particular tower location, could not be accepted at face value and further evidence would be required to be led on that question, especially as the mobile phones may have been shifted to different locations.

Therefore, even while holding that simple reiteration in the testimonies of PWs 1 and 2, of the facts as stated in the FIR, is not sufficient evidence to point to the culpability of the petitioners, in the entire circumstances that Court further went on to record that the positive corroboration of the said two witnesses (seen with the contradiction in the

testimonies under Sections 174 and 161 Cr.P.C.), did make out more than a prima-facie case against the petitioners.

17. Hence, the judgment relied upon by Mr. Gautam Dutt, learned counsel for the petitioners, in *Brijendra Singhs'* case (supra), in my opinion, does not come to his help, because in that case it was found that eventually the trial Court went on to summon the persons named in the application filed under Section 319 Cr.P.C., only on the basis of the fact that the complainant and some other persons, in their examinations-in-chief, had reiterated what was already recorded in the statements made under Section 161 Cr.P.C., with no other material to support those contentions, with the police having found that those who were sought to be summoned, were actually about 175 kms away from the place of occurrence.

18. In the present case, the position of the mobile phone towers that recorded the mobile phone numbers of the petitioners at the time of the occurrence, being within 10 kms of the place of occurrence, and it not having been shown before the trial Court, firstly, whether in fact the location of the mobile phones could have been picked up by other towers within a 10 km range, and further, that there were any other mobile phones carried by the petitioners or not (as observed by the trial Court), and moreover, there being contradictions as regards the petitioners' presence (or otherwise) even in the statements recorded under Sections 174/175 and Section 161 Cr.P.C., I see no reason to set aside the essence of the impugned order, but with all observations made by the trial Court to be ignored from the impugned order, by which that Court has virtually already expressed its opinion that the petitioners are involved in the commission of the offence.

19. Consequently, while dismissing this petition, the trial Court is

directed to ensure that all such observations made by that Court, virtually holding the petitioners guilty at this stage itself, are completely ignored by it and that the guilt or innocence of the petitioners and all other co-accused as are tried before it, is established wholly and only on the basis of evidence led before it on both sides.

The interim order dated December 18, 2017, consequently stands vacated, with the trial Court to proceed with the trial expeditiously.

July 2, 2018
dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes/no

Whether reportable: Yes/no