

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

CRR No.2152 of 2018 (O&M)
Decided on:- November 13, 2018.

Deepak Sharma.

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Amandeep Singh, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present criminal revision under Section 401 Cr.P.C. against order dated 08.05.2018 passed by learned trial Court, whereby the application filed by the prosecution under Section 319 Cr.P.C. for summoning of respondents No.2 and 3, namely, Kulprit Singh @ Rubal and Gagandeep Kataria as additional accused, was dismissed.

Briefly stated, an FIR No.93 dated 14.05.2010 under Sections 307, 452, 148, 149 and 427 IPC was registered at Police Station Division No.6, Ludhiana on the basis of statement made by complainant Jasvir Singh.

As per the FIR, on 13.05.2010 at about 09.45 P.M., when the complainant was standing outside his shop and his elder son Gauravjit Singh @ Gora was sitting at the counter of the shop, Rajinder Singh @ Lovely and Vikas Chhabra, who were known to Gauravjit Singh entered the shop. In the meantime, accused Ankur, Ajay, Kali and Rubal along with 7-8 unknown

persons armed with iron Daat, baseball etc. in their hands came there and started giving blows to Rajinder Singh @ Lovely due to which he fell down and in order to save him, Gauravjit Singh @ Gora son of the complainant and salesman Gaurav Kapoor moved forward. However, the assailants with an intention to kill Gauravjit Singh @ Gora i.e. son of the complainant, his salesman and the person known to him, gave repeated blows to them with sharp edged weapons. The complainant with the help of neighbours raised an alarm and on gathering of neighbours and other persons, the assailants after causing injuries to the persons and demolishing the articles and fittings in the shop ran away from the spot with their respective weapons. The injured were admitted in CMC Hospital, Ludhiana.

While the trial was pending, the prosecution had moved an application under Section 319 Cr.PC on the basis of statement of PW Vikas Chhabra recorded on 12.02.2015 and 03.04.2018. In his statement, Vikas Chhabra named respondents No.2 and 3 Kulprit Singh alias Rubal and Gagandeep Kataria as accused. Initially, their names were mentioned in the FIR, but they were kept in Column No.2 in the Challan. However, as Vikas Chhabra named them categorically, the application under Section 319 Cr.P.C. was filed by the prosecution seeking their summoning as additional accused.

The said application under Section 319 Cr.P.C. was dismissed by learned Additional Sessions Judge, Ludhiana vide impugned order dated 08.05.2018.

It is against the aforesaid order dated 08.05.2018 passed by learned trial Court, the present criminal revision has been filed.

Learned counsel for the petitioner has argued that after

registration of the FIR, the prosecution agency investigated the matter and found that respondents No.2 and 3 were innocent. However, when the Challan was presented in the Court, they were kept in Column No.2. After presentation of the Challan, complainant Jasvir Singh and injured Vikas Chhabra named the respondents No.2 and 3 in their examinations-in-chief and stated that respondents No.2 and 3 were armed with iron Daat and gave injuries to the complainant and other persons present at the spot. But the trial Court without going through the evidence and the version of the FIR, wrongly dismissed the said application filed under Section 319 Cr.P.C. without appreciating the fact that the complainant at the time of registration of the FIR had specifically named respondent No.2 Kulprit Singh alias Rubal, who came at the shop of the complainant along with other co-accused. Similarly, injured Vikas Chhabra has specifically named respondent No.3 in his examination-in-chief, wherein he stated that respondent No.3 Gagandeep Kataria also came along with other co-accused at the shop of the complainant and also joined the accused in the incident.

He has further contended that as per Section 319 Cr.PC when it appears in evidence during the trial, that the person named has not been arrayed as an accused, such person can be arrayed as accused and accordingly, the application under Section 319 Cr.PC was moved by the prosecution for summoning the respondents No.2 and 3 as additional accused. The power of the Court for summoning as additional accused, though not named in the FIR, but subsequently arrayed as an accused, has elaborately been discussed in ***Hardeep Singh Versus State of Punjab (2014) 3 SCC 92***. Thus, he has prayed for setting aside of the impugned order dated 08.05.2018 passed by learned

trial Court and has sought summoning of respondents No.2 and 3 as additional accused.

I have heard learned counsel for the petitioner.

No doubt, Section 319 Cr.PC provides that where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused, has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which such person appears to have committed the offence.

However, at the same time, no person on an application under Section 319 Cr.PC can be summoned as an additional accused merely on the basis of statement of the complainant recorded in the Court unless there is material to summon. In order to summon an accused, some “fresh evidence” must have come on record so as to impel the Court to summon such person as an additional accused.

In the present case, the FIR was registered on 14.05.2010 on the basis of statement made by complainant Jasvir Singh. As per the FIR, on 13.05.2010, when the complainant was standing outside his shop, his elder son Gauravjit Singh @ Gora was sitting on the counter of the shop, Rajinder Singh alias Lovely and Vikas Chhabra, who were known to Gauravjit Singh had entered the shop and it was in their presence, the accused including Ankur, Ajay, Kali and Rubal along with 7-8 unidentified persons armed with iron Daat, baseball etc. came there and gave injuries to Rajinder Singh alias Lovely, due to which Lovely suddenly fell. However, when Gauravjit Singh and his salesman Gaurav Kapoor came forward to save him, the assailants

with the help of their respective weapons attacked Gauravjit Singh @ Gora, the salesman Gaurav Kapoor and the other persons.

On the basis of recorded version of the FIR, the police conducted a thorough investigation and during the course of investigation, respondents No.2 and 3 were found innocent and were kept in Column No.2 when the report under Section 173 Cr.PC was presented in the Court. Complainant Jasvir Singh when examined during the trial though has named Rubal along with Ankur, Ajay, Kali and 7-8 unknown persons in his examination-in-chief, but in his cross-examination, he took a somersault and he was allowed to be re-examined by the Additional Public Prosecutor, but to no effect. Another prosecution witness i.e. injured Vikas Chhabra deposed that on 13.05.2010 at about 09.45 P.M., he along with Rajinder Singh alias Lovely went to the shop of Gauravjit Singh, where complainant Jasvir Singh father of Gauravjit Singh @ Gora was standing outside the shop when they entered the shop. In the meantime, 10-12 persons earlier known to him came there, who were armed with Iron Daat and baseball bats. The accused, namely, Rubal, Kali, Ankush, Rohit alias Bhuto, Mohini, Ajay Pal, Deepu Kakri, Deepak, Ajay Jadeja, Sachin, Kanwaljit, Deepak alias Kali and Gagan came on motorcycle and car and raised a Lalkara. They attacked on Rajinder Singh alias Lovely with their respective weapons and had caused injuries to him. On seeing the gathering of public, the above named accused fled away from the spot along with their respective weapons. However, except for mentioning the names of Rubal and Gagandeep by PW Vikas Chhabra, nothing has come on record attributing any overt act to them.

For summoning a person as an additional accused during the

course of trial, the satisfaction of the Court as regards the originally summoned accused, is a little different. In the case in hand, complainant Jasvir Singh turned hostile and resiled from his earlier statement and accordingly, he was re-examined by learned Additional Public Prosecutor at length, but nothing has come from his re-examination, which may substantiate any allegation against the persons sought to be summoned as additional accused. The respondents No.2 and 3 have only been named by injured PW Vikas Chhabra in his examination-in-chief but nothing has been attributed to them.

Hon'ble Supreme Court in ***Pepsi Foods Limited and another Versus Special Judicial Magistrate and others-(1998) 5 Supreme Court Cases 749*** has held as under:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is

prima facie committed by all or any of the accused.”

In ***Hardeep Singh’s case (supra)***, it has been held by the Apex Court that the degree of satisfaction for invoking Section 319 Cr.P.C. should be of more than a prima-facie case, as exercised at the time of framing of charge, but short of satisfaction to an extent that evidence, if not rebutted, may lead to conviction of the person sought to be added as accused.

Interestingly, neither the complainant nor the prosecution has filed present criminal revision. Rather, it has been filed by petitioner Deepak Sharma, who is already facing the trial as an accused.

Therefore, having applied the judgments of Hon’ble Supreme Court in ***Pepsi Foods Limited and another’s case (supra)*** and ***Hardeep Singh’s case (supra)*** and noticing the fact in his cross-examination, the complainant did not name the respondents No.2 and 3, rather he turned hostile and considering the fact that injured Vikas Chhabra has not been attributed any overt act upon respondents No.2 and 3, this Court finds that there is no illegality in the impugned order dated 08.05.2018 passed by learned trial Court.

Accordingly, the impugned order dated 08.05.2018 passed by learned Additional Sessions Judge, Ludhiana is affirmed and the present criminal revision, being devoid of any merit, is dismissed.

November 13, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No