

Sr. No.110

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

**CRR-2530-2018(O&M)
Date of decision:23.08.2018**

Harpal Singh @ Nanu

.....Petitioner

versus

State of Punjab and another

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

**Present: Mr. Parminder Singh Sekhon, Advocate
for the petitioner.**

Rajbir Sehrawat, J(Oral)

The present petition has been filed for challenging the Order dated 21.07.2018(Annexure P-4) passed by the Court of Additional Sessions Judge, Sangrur whereby the application filed by the petitioner under Section 319 Cr.P.C. for summoning respondent No.2-Avtar Singh as an accused to face trial with other co-accused was rejected.

The brief facts of this case are that on the complaint of the present petitioner, FIR No.32 dated 29.04.2016 was registered under Sections 308/382/323/148/149/201 IPC at Police Station, Cheema, District Sangrur. In the FIR it was alleged that petitioner had taken land measuring 8 Killa belonging to the Kalgidhar Trust. Barru Sahib on lease which is opposite to the PPS School, Cheema. On the date of occurrence, petitioner alongwith his friend Amandeep Singh and Pirthi Singh was cultivating land with tractor of make Ford 3630. Then at around 11:30 am one Innova car came from main road and stopped on the unmetalled way near the land. Out of that Car, Lakhvir Singh @ Lakha, Nachhattara Singh, Jagga Singh,

Satwant Singh @ Kala, Gurdeep Singh @ Deepa and Avtar Singh @ Tari alighted and started coming towards the petitioner. On seeing the above said persons, the petitioner stopped the tractor. Then Lakhvir Singh @ Lakha raised lalkara and, allegedly, injuries were caused to the petitioner in this incident. It is alleged that Avtar Singh @ Tari also raised lalkara saying that they will not leave the petitioner alive, on which injuries were caused by the co-accused. It is further alleged that when the petitioner fell down and his companion Pirthi Singh tried to handle him; then Avtar Singh @ Tari and Nachhattar Singh snatched the tractor along with 'Taran' and ran away with their weapons and Innova Car.

After investigation of the above said incident, the police presented the Challan against four co-accused of respondent No.2-Avtar Singh @ Tari. The reason for not filing challan against Lakhvir Singh @ Lakha was that he had expired before the date of filing of the challan. Whereas the police had not found any material against respondent No.2-Avtar Singh; sufficient to file report against him under Section 173 Cr.P.C. Therefore, no challan was filed against him.

After starting of the evidence, the petitioner examined himself. On completion of his statement, the petitioner moved an application under Section 319 Cr.P.C. for summoning the above said Avtar Singh @Tari as an accused to face the trial along with the other accused.

On these facts, while arguing the case, learned counsel for the petitioner has submitted that in fact it is the Avtar Singh @Tari who is the main accused in the case. There is specific allegation against him that it was Avtar Singh @Tari who had taken away the tractor. Therefore, he had also committed offence under Section 382 IPC; besides raising the lalkara.

Hence the police had wrongly absolved the Avtar Singh @Tari from the liability of prosecution. It is contended by learned counsel for the petitioner that since there are specific allegation levelled against Avtar Singh @Tari in the statement of the petitioner; made before the Trial Court, therefore, respondent No.2-Avtar Singh @Tari is liable to be summoned. The Court has wrongly rejected the application.

Having heard the learned counsel for the petitioner, this Court finds that the argument of learned counsel for the petitioner is not sustainable in law. It is an established law that power under Section 319 Cr.P.C is not to be exercised only on asking of the complainant. It is a natural sequence that every complainant shall be having some grievance against any person who is absolved by the police. But his grievance can not substitute the requirement of Section 319 Cr.P.C; as laid down by the Hon'ble Supreme Court. Hon'ble Supreme Court has held in **Hardeep Singh vs. State of Punjab and others, 2014(1) R.C.R.(Criminal) 623** as under:-

“99. 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."

If the above said test laid down by the Hon'ble Supreme Court is to be applied; then the petitioner has failed to satisfy the Court that there is any material sufficient for the Court to arrive at a more than prima facie satisfaction qua the involvement of respondent No. 2-Avtar Singh@Tari as an accused. Admittedly, except the statement of the petitioner made before the Court, there is no other material available on record to show culpability of respondent No. 2.

The allegation of the petitioner that it is respondent No. 2-Avtar Singh @Tari; who had taken away the Tractor; is not found to be sustainable even from the contents of the FIR. In the FIR itself it is written that it was Nachhattar Singh and Avtar Singh @Tari who had taken away the tractor. However, during the Investigation, the police recovered that Tractor neither from Avtar Singh @Tari nor from Nachhattar Singh. Tractor was found abandoned. In any case, Nachhattar Singh is already facing the trial. So far as Avtar Singh @Tari is concerned, the police found that on the given date, the said Avtar Singh @Tari was present before the Court of Sub Divisional Judicial Magistrate; in a case which was pending against him. The police has duly verified the plea taken by Avtar Singh @Tari during Investigation and found the same to be correct. The petitioner has not been able to bring on record or to show from evidence on record; that this verification of the said Avtar Singh @Tari being present before the Court on a given date is factually incorrect. It is not even the case of the

petitioner that the said Avtar Singh @Tari was not required to be present before the Court on that date.

In view of the above, but without further commenting upon the merits of the case, the present petition is dismissed. Order passed by the Trial Court is upheld.

However, anything said herein above, would not affect the merits of the case during trial.

23rd August, 2018
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>