

Sr. No.108

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

**CRR-3450-2018(O&M)
Date of decision:12.10.2018**

Amolakjit Singh

.....Petitioner(s)

versus

State of Punjab and others

.....Respondent(s)

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Veneet Sharma, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

Challenge in the present petition is to the Order dated 04.09.2018 passed by the Additional Sessions Judge, Amritsar, whereby the application filed by the present petitioner/complainant for summoning the respondent as additional accused; by exercising powers under Section 319 Cr.P.C. has been declined.

As per the allegation, the petitioner had lodged an FIR qua the death of Gurdev Singh, paternal uncle of the present petitioner, alleging that fight had taken place between the side of the complainant and the side of the respondents. In that fight Harlaj Singh @ Tinku and Parlaj Singh @ Pintu fired shot at Gurdev Singh. Resultantly, Gurdev Singh had died. Certain other persons were also named in the FIR as the persons present there with the weapons. Qua the present respondents the allegation was that they also hid something like weapon in their clothes. Further allegation against the present respondents No. 2 to 5 was that they raised the lalkara.

After conducting the investigation, the police filed challan

against five persons, including the persons who had fired shot, leading to death of the deceased and the persons who were openly hurling the weapons at the time of incident. However, respondents No. 2 to 5 herein; were not found to be involved in the incident by the police. Therefore, challan was not filed against the respondents No. 2 to 5.

After starting of the trial, Complainant made statement before the Court repeating the allegations levelled in the FIR. After having made the statement, the application under Section 319 Cr.P.C. was moved by the Complainant through Public Prosecutor; for summoning of the respondents No. 2 to 5 as an additional accused. However, the Trial Court has not found substance in the application. Finding no sufficient material to justify the summoning of the additional accused, the Trial Court has declined the application. That's how the present revision petition has been filed by the Complainant.

While arguing the case, learned counsel for the petitioner has submitted that the allegation against the respondents No. 2 to 5 are at par with the allegations against those persons, who have been sent up for the trial by the police itself. The allegation against some of the accused already facing the trial, are similar as to the allegations levelled against respondents No. 2 to 5. Therefore, there was no rationale with the Trial Court not to summon the respondents No. 2 to 5 as an additional accused. It is further contended that respondents No. 2 to 5 were declared Proclaimed Offenders during the Investigation. They had never applied for anticipatory bail and they had never joined the investigation. Despite that police declared them innocent on the basis of two inquiries conducted, one by ADCP, City-I, Amritsar and the second by ADCP, Crime, Amritsar. It is contended by

learned counsel for the petitioner that the Police has shown the extreme decrees of favoritism in this case; by excluding respondents No. 2 to 5 from the trial.

Having heard learned counsel for the petitioner and perusing the record made available, this Court does not find any illegality or infirmity with the Order passed by the Trial Court. While appreciating the evidence, the statement made by the Complainant has been analysed in detail by the Trial Court. After analysis, the Trial Court has come to a satisfaction that the evidence on the file is not sufficient to summon the respondents No. 2 to 5 as additional accused. This satisfaction of the Trial Court is based on, none other than, the statement made by the Complainant himself. Trial Court has found that the allegation levelled by the Complainant against respondents No. 2 to 5, for summoning them as additional accused, is that they actively participated in the unlawfull assembly which led to the murder of Gurdev Singh. However, the contents of the statement itself reflect that there are no allegations against the respondents No. 2 to 5; for their active participation; except raising lalkara, No overt act of any kind is attributed to them. Even an attempt to cause injury is not attributed to respondents No. 2 to 5. The net allegation against respondents No. 2 to 5 is that they raised lalkara. However, this bald allegation has not appealed to the Trial Court. Resultantly, the application has been dismissed.

Provision of Section 319 Cr.P.C. confers the power upon the Trial Court to summon a person as an additional accused, if it appears to it that some other accused has also committed an offence and he should be tried along with other accused; who are already facing the trial. However, this provision confers a discretion upon the Trial Court and not a bounden

duty. Like any other discretion, this discretion is also to be exercised by the Trial Court in accordance with the well established judicial principles. The Hon'ble Supreme Court has laid down the test for exercise of a discretion under Section 319 Cr.P.C. in the judgment rendered in ***Hardeep Singh versus State of Punjab and others; 2014(1)ADJ 727*** in the following terms:-

“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 the 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 or 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.”

Order passed by the Trial Court if considered with reference to test laid down by the Hon'ble Supreme Court then it can safely be said that the Trial Court has properly applied the test laid down by the Hon'ble Supreme Court. Mere uncorroborated allegation of raising lalkara may not

be sufficient material to lead the Trial Court to more than *prima facie* satisfaction that such a person should be tried along with the other accused, who have caused death or have actively participated in it. Hence the satisfaction of the Trial Court in this regard can not be faltered in the present case. Needless to say that for the purpose of Section 319 Cr.P.C. it is the satisfaction of the Trial Court which is material. A higher Court can only look into the illegalities and proprieties of the Order passed by the Trial Court. However, in the present case, nothing has been brought out to the notice of the Court, making the Order to be illegal or improper.

However, learned counsel for the petitioner has pointed out that with the similar allegations, the other persons have already been sent for trial by the police. If respondents No. 2 to 5 are not summoned by the Trial Court then those persons, who have already sent by the police would also get the benefit of non-summoning of respondents No. 2 to 5. However, it goes without saying that the accused who are facing the trial would be considered and tried by the Court on the basis of evidence, available against them, irrespective of being influenced by any other order passed in any other proceedings. Therefore, the apprehension of the learned counsel for the petitioner in this regard is without any basis.

In view of the above, finding no merit in the present case, the same is dismissed.

12th October, 2018

Shivani Kaushik

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*