

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

CRR No. 530 of 2018

DATE OF DECISION :- May 30, 2018

Pawan Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAN

Present:- Mr. R.S. Mamli, Advocate for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

Mr. V.K. Jindal, Sr. Advocate with
Mr. Gopal Soni, Advocate
for respondents no. 2 to 5 and 9.

None for respondents no. 6 to 8.

This Revision petition is directed against the order dated 17.1.2018 passed by the Sessions Judge, Bhiwani vide which he had dismissed an application under Section 319 Cr.P.C. filed by the prosecution for summoning of the additional accused.

Briefly stated the facts of the case are that complainant Pawan Kumar son of Jagdish Chand resident of Ward No. 9, Bagri Mohalla, Tosham, District Bhiwani, aged about 32 years had got his statement recorded with police of Police Station Tosham on 18.6.2016 stating therein that he is having a confectionary shop at Main Chowk Tosham; that on 17.6.2016 when the complainant and his younger brother Vinod Kumar

were closing the shop at about 10.30 P.M. then Kamal son of Rai Singh, Sanjay son of Bharta, Ram Avtar son of Bishambhar, Parveen Kumar son of Puran Chand, all residents of Tosham came there; that Kamal, Sanjay took Vinod Kumar in his grasp. Ram Avtar caught hold of Vinod Kumar from his left hand, Parveen Kumar having a knife gave a blow there with on chest of Vinod Kumar. Vinod Kumar managed to get himself released and ran towards the street. According to the complainant, he also ran behind Vinod Kumar but Vinod Kumar-injured fell in the street. Then Parveen again hit Vinod Kumar with knife resultantly Vinod Kumar died on the spot. Then Puran son of Nand Lal, Rai Singh son of Nand Lal,, Bishamber son of Nand Lal, residents of Tosham having sticks in their hands, Joginder, Bittu having knives, Mukesh son of Puran Chand was having stick inflicted injuries on Vinod Kumar, who was lying there. On alarm being raised by the complainant Vakil son of Om Parkash, resident of Arya Nagar, Hisar and Darshana wife of Dalip Singh came to the spot. On arrival of such persons the accused ran away along with their respective weapons. According to the complainant he took his brother to CHC Tosham for treatment, however, on the way Vinod Kumar died.

After registration of F.I.R. the matter was investigated. Accused Ram Avtar and Sanjay were arrested in this case and sent up to face trial.

During the trial the prosecution had moved an application under Section 319 Cr.P.C. for summoning of Kamal son of Ram Singh, Pawan son of Jagdish Chand, Puran son of Nand Lal, Ram Singh son of Nand Lal, Bishamber son of Nand Lal, Joginder son of Bishamber, Bittu son

of Om Parkash, all residents of Tosham as additional accused which was dismissed. The said order left the complainant aggrieved and he has filed the present Revision Petition, notice of which was given to the respondents.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner has contended that in this case the main accused happen to be Parveen Kumar, to whom the fatal blow is attributed but he was let off by the investigating agency and even the trial Court has not summoned him. Further more the complainant in statement to the police had stated that Kamal and Ram Avtar had caught hold of hands of Vinod Kumar when Parveen Kumar had stabbed Vinod Kumar in the chest. Even then Kamal has not been summoned to face trial, therefore, the order is not sustainable and is liable to be set aside.

On the other hand learned Senior counsel for the respondents has argued that there is delay in reporting the matter to the police which was utilised in fabricating a story and to rope in as many persons as possible from the accused side. For that very reason, the complainant has named so many persons though they have nothing to do with the incident. It has been so done to damage the career of Parveen, who is working as a Bank Manager with Sarv Haryana Gramin Bank, Kalod, Tehsil Siwani who was not present as he was undergoing coaching for the post of Probationary Officer in the bank and was residing at Balaji Coaching Centre, Behal, whereas Kamal being driver was out of station, Puran has retired from Roadways, Ram Singh is an ex-army personnel. The trial Court did not find sufficient evidence warranting their summoning as such rightly dismissed

the application. He has referred to authority *Hardeep Singh versus State of Punjab and others 2014(1) RCR (Criminal) 623* in support of his contentions. In that authority while summoning up the conclusion dealing with the question what is nature of satisfaction required to evoke the power under Section 319 Cr.P.C to array an accused and whether the power under Section 319 (1) Cr.P.C. can be exercised only if the Court is satisfied that the accused summoned will in all likelihood be convicted. It has been observed that the degree of satisfaction that will be required would be same as for framing a charge.

In the instant case though there appears to be some delay in reporting the matter to the police and the court is aware of the fact that there does exist a tendency amongst people of the region to throw the net wide and rope in as many as persons as possible of the opposite side in case incidents of such type take place but at the same time it is to be kept in mind that the complainant having lost his real brother ordinarily would not try to shield a real culprit and introduce innocent persons in their place without any rhyme or reason. If he has attributed fatal injury to a particular person then that contention needs to be examined thoroughly. Though contents of the F.I.R. cannot be taken as gospel's truth but at the same time the contents cannot be viewed with suspicion without there being a very strong reason for doing so. The learned Sessions Judge has refused to summon Parveen for the reason that he is working as a Bank Manager with Sarv Haryana Gramin Bank. But only for the reason it cannot be inferred that he could not have participated in the crime. The incident is said to have taken place at night. There is nothing on record to show that some material has come to

notice of learned Sessions Judge that Parveen is posted at a very far of place and day of the incident was a Bank working day with Parveen being on duty during working hours and distance between his place of working and the place of incident is so much that he could not have possibly been there at the time of incident. With fatal injury having been attributed to Parveen the Court simply refused to proceed against him for the reason that he is posted as a Manager with some bank. Similarly learned Sessions Judge has not given any sound reasoning for non summoning of the remaining persons as additional accused. No doubt it is discretion of the trial Judge to allow or decline the application but the discretion must be exercised in a judicious manner as per settled legal parameters showing due application of mind giving valid reasoning which is found to be missing in this case.

Therefore, the impugned order cannot stand judicial scrutiny and is hereby set aside. Learned Sessions Judge is directed to consider the application again and then pass a fresh order giving reasons for arriving at his conclusion.

The petition stands disposed of accordingly.

(H.S. MADAAN)
JUDGE

May 30, 2018
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No