

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

Sr. No.110

CRR-986-2018

Date of decision : 17.04.2018

Mehar Singh and another

..... Petitioners

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. H.S. Brar, Advocate, for the petitioners.

Mr. K.S. Sidhu, DAG, Punjab.

Dr. Anmol Rattan Singh Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Advocate, for the complainant.

SUDHIR MITTAL, J.

The petitioners, namely, Mehar Singh son of Jhanda Singh and Harbhajan Singh Sandhu son of Hari Singh Sandhu, impugn order dated 30.01.2018, whereby they have been summoned as additional accused in case FIR No.47 dated 18.05.2016, registered at Police Station, Punjab Agricultural University, Ludhiana, under Sections 302/307/427/212/216/120-B/148 and 149 IPC and Sections 25 and 27 of the Arms Act, 1959, after an application dated 11.07.2017 under Section 193 Cr.P.C. read with 319 Cr.P.C, was allowed.

2. The aforementioned FIR was registered on the basis of statement of one Kulwinder Singh, personal driver of Baba Ranjit Singh Dhandrianwala. The gist of the FIR is that on 17.05.2016 at about 5.45 p.m., Baba Ranjit Singh Dhandrianwala was moving from Shri Parmeshwar Dwar, Patiala to village Isewal, Police Station, Dakha

for Gurmati Samagam. One Baba Bhupinder Singh was sitting in the co-driver seat and sewadar Harinder Singh was sitting on the rear seat besides Baba Ranjit Singh Dhandrianwala. This vehicle was part of a convoy of four vehicles. The first vehicle in the convoy was being driven by Bhai Jasvir Singh and 4-5 other people were sitting in that vehicle. This vehicle was followed by vehicle of Baba Ranjit Singh Dhandrianwala, which was further followed by a Scorpio vehicle and an Innova vehicle. The Scorpio was being driven by Harpinder Singh son of Dhian Singh. At about 7.45 p.m., their vehicles were about 110 yards short of Barewal Canal Bridge. A chabil had been set up by erecting a tent and some vehicles were parked on the road side. The vehicles of the convoy of Baba Ranjit Singh Dhandrianwala were stopped by the persons running the chabil and one of them approached Jasvir Singh (driver of the first vehicle) on the pretext of serving water and asked him about the vehicle in which Baba Ranjit Singh Dhandrianwala was seated. Before Jasvir Singh could answer, the said person noticed Baba Ranjit Singh Dhandrianwala seated in the second vehicle and called out to the people seated in the tent. Immediately, 30-40 persons sprayed the wind screen of that vehicle and attacked the same with rods, gandasis and baseball bats. Shots were fired, one of which hit Baba Bhupinder Singh on the head and he collapsed. Baba Ranjit Singh Dhandrianwala had a providential escape as he crouched in the rear of the vehicle and was driven away from the spot by the complainant. The vehicle was followed by 2-3 vehicles, one of which was Tata Safari and shots were again fired. The

complainant, namely, Kulwinder Singh however, managed to drive away to safety.

3. Initially, the FIR was registered against unknown persons. A supplementary statement of complainant-Kulwinder Singh was recorded on 18.05.2016, in which he named four persons as accused. A second supplementary statement of said Kulwinder Singh was recorded on 24.05.2016, in which he named ten more persons. His third supplementary statement was recorded on 24.05.2016 itself, in which Jaspreet Singh and Hardev Singh were named as the persons, who stopped the first vehicle of the convoy. On 02.07.2016, statements of Jasvir Singh (driver of the first vehicle of the convoy) and other witnesses were recorded under Section 161 Cr.P.C, which revealed that one Tata Safari bearing registration No.PB-23-J-0015 and one Scorpio bearing registration No.DL-3C-AS-1928 followed the vehicle of Baba Ranjit Singh Dhandrianwala, after he was driven away by the complainant. The statement of Baba Ranjit Singh Dhandrianwala was recorded on 05.08.2016. On the same day, statement of Satnam Singh son of Surinder Singh was also recorded, in which he stated that Jaspreet Singh and an unidentified person, who could be identified, were armed with gun.

4. Challan dated 09.08.2016 was presented in the Court, in which it is mentioned as follows:-

“The eye witnesses in their statements have described Jaspal Singh Sidhu, Harbhajan Singh and Baba Harnam Singh as accused. The interrogation and investigation against them and the licence holder of rifle 315 bore taken into custody of the police in the case, Mehar Singh son of Jhanda

Singh resident of village Moranwali, District Faridkot who is father of accused Satnam Singh, is continued.”

5. Thereafter, present application dated 11.07.2017, under Section 193 read with Section 319 Cr.P.C. was filed. Reference is made therein to statements of Jasbir Singh son of Pritam Singh (a sewadar, who was allegedly sitting in the first vehicle of the convoy), Gurbinder Singh @ Harbhinder Singh son of Dhian Singh (a sewadar, who was sitting in Scorpio following the vehicle of Baba Ranjit Singh Dhandrianwala) and Jeewan Singh son of Gurdev Singh (a sewadar, who was sitting in the first vehicle in the convoy), who named petitioner-Harbhajan Singh Sandhu as one of the persons, who stopped the convoy on the pretext of serving water. Reference has also been made to recovery of Tata Safari No.PB-23-J-0015 from accused, namely, Sukhwinder Singh @ Sonu. From this vehicle a rifle and an arms licence were recovered. Further, reference has been made to statements of witnesses from which it is revealed that the said Tata Safari vehicle followed the vehicle of Baba Ranjit Singh Dhandrianwala for some time and that shots were fired therefrom. Reference has also been made to the record of investigation from which it transpires that the weapon of offence i.e. rifle is owned by petitioner-Mehar Singh and he is the licence holder thereof. This weapon was recovered from accused-Sukhwinder Singh @ Sonu. Thus, grievance raised was that despite there being evidence on record, the petitioners have not been challaned. Their involvement in the crime is evident and therefore, they should be summoned as additional accused. I may hasten to add that two other persons were named in the aforestated application

dated 11.07.2017, one of whom was not summoned and against the other, the application was dismissed, as not pressed since the police had initiated the process to arrest him.

6. Learned counsel for the petitioners has submitted that application dated 11.07.2017 was moved under Section 319 Cr.P.C as is evident from the head note of the said application. Thus, the impugned order has been passed under Section 319 Cr.P.C, but notice of the said application was not issued to the petitioners and therefore, the impugned order is liable to be set aside. Reference has been made to **‘Jogendra Yadav and others Vs. State of Bihar and another, 2015(3) RCR (CrI.) 935.’** His further submission is that in exercise of jurisdiction under Section 319 Cr.P.C, a person can be summoned as an additional accused only if there is sufficient evidence on record, which if remains unrebutted, would lead to the conviction of the persons summoned as additional accused. The evidence on record relied upon by the applicant-complainant does not meet this standard and therefore, the impugned order is bad in law. In this regard, reliance has been placed upon **‘Hardeep Singh Vs. State of Punjab, 2014(1) RCR(CrI.) 623.’**

7. Learned senior counsel appearing for the complainant has controverted the aforementioned submissions by stating that the head note of application dated 11.07.2017 clearly mentions Section 193 Cr.P.C in addition to Section 319 Cr.P.C. Infact, the said application was filed under Section 193 Cr.P.C. Merely because Section 319 Cr.P.C is also mentioned in the headnote, would not be conclusive of the fact that it was filed only under that provision. Moreover, the Court has to see the stage

at which the application was moved and its jurisdiction would flow from the stage of trial. The trial has not commenced as yet and the stage of Section 319 Cr.P.C has not been reached and therefore, the impugned order was passed in exercise of jurisdiction under Section 193 Cr.P.C. Thus, no notice was required to be issued to the petitioners. That apart, the complainant had moved this Court under Article 226 of the Constitution of India and this Court had given liberty to him to move an application under Section 193 Cr.P.C and therefore, application dated 11.07.2017 was filed. Since, the impugned order was passed in exercise of jurisdiction under Section 193 Cr.P.C, the petitioners could have been summoned on a prima facie case being made out against them. The standard laid down while summoning a person under Section 319 Cr.P.C. is not attracted in this case. Reliance has been placed upon **“Dharam Pal and others Vs. State of Haryana and another, 2014(3) SCC 306.”**

8. The primary question that arises for consideration in this case is whether the learned trial Court exercised jurisdiction under Section 193 Cr.P.C. or under Section 319 Cr.P.C while passing the impugned order.

9. It is not in dispute that after the commitment of the case to the Court of Session, charges have not yet been framed. It is trite law that trial of the case commences after framing of charge. Thus, it is not possible to accept the submission made on behalf of the petitioners that the impugned order was passed in exercise of jurisdiction under Section 319 Cr.P.C. Both Sections 193 Cr.P.C as well as 319 Cr.P.C. are reproduced below:-

“Section 193. Cognizance of offences by Courts of Session. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.”

“Section 319. Power to proceed against other persons appearing to be guilty of offence.

(1) 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 he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced a fresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

10. From a perusal of the above quoted provisions, it is evident that the Court of Session can exercise original jurisdiction only after the case has been committed to it. This implies that post commitment, the

Court of Session can taken cognizance of an offence and if it appears from the material available on record that a person, who should have been summoned as an accused, has not been so summoned, it can issue process against such a person. The exercise of this jurisdiction may be suo motu or on an application moved in this regard by the complainant or the prosecution. My view is supported by the judgment of **Dharam Pal** (supra), wherein the Hon'ble Supreme Court of India has laid down that after final report under Section 173 (2) Cr.P.C is presented before a Magistrate, the Magistrate commits case to the Court of Session on finding that the same is triable exclusively by the said Court. Thereafter, the Court of Session is empowered to exercise original jurisdiction. On a perusal of the commitment papers, if it appears to the Court that some persons, who have not been challaned, should be summoned to stand trial, it can exercise jurisdiction under Section 193 Cr.P.C and summon such persons. The power exercised at this stage is similar to that exercised by a Magistrate after final report under Section 173 (2) Cr.P.C is presented before him and he does not agree therewith. At this stage, the standard for summoning an additional accused as laid down in **Hardeep Singh's case** (supra) is not attracted. Only an opinion regarding existence of prima facie has to be formed. The judgment of **Jogendra Yadav** (supra) is not attracted to the facts of this case as the said judgment was passed in a case under Section 319 Cr.P.C. Thus, there can be no requirement of issuing notice to the persons intended to be summoned as additional accused. As mentioned hereinabove, the statements of witnesses under Section 161 Cr.P.C. as well as the record of investigation prima facie

establishes that the petitioners were involved in the incident that took place on 17.05.2016. Petitioner-Mehar Singh is the owner of weapon of offence recovered from accused-Sukhwinder Singh @ Sonu and therefore, an offence under the Arms Act, 1959, prima facie is made out. So far as, petitioner-Harbhajan Singh Sandhu is concerned, three witnesses have named him as one of the persons, who stopped the first vehicle of convoy of Baba Ranjit Singh Dhandrianwala on the pretext of serving water and then directed the co-accused to attack the vehicles. Thus, it cannot be said that their summoning as additional accused is illegal.

11. For the aforementioned reasons, the revision petition is without merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

17.04.2018

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No