

Sr. No.130

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

CRM-M-56060-2018(O&M)

Date of decision:18.12.2018

**Munish Kumar @ Munish Sharma and another
.....Petitioners**

versus

**State of Punjab and others
.....Respondents**

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

**Present: Mr. Vishal Munjal, Advocate
for the petitioners.**

Rajbir Sehrawat, J(Oral)

Present petition has been filed challenging the Order dated 24.04.2018(Annexure P-4) passed by the Judicial Magistrate Ist Class, Pathankot; whereby the petitioners were summoned by exercising powers under Section 319 Cr.P.C; as an additional accused to face the trial under Sections 326,323 read with Section 34 IPC, as well as, the Order dated 20.09.2018(Annexure P-7) passed by the Additional Sessions Judge, Pathankot whereby the revision petition filed by the petitioners against the Order passed by the Trial Court was dismissed.

In the present case, the proceedings were initiated in the FIR on the statement of Narinder Singh, wherein it was alleged that on 10.10.2011, he and his brother Sudershan Singh were coming on a motor cycle from their fields after harvesting their crops. When they reached near Dhakki Railway Crossing; at around 10:00 pm, then Munish Kumar son of Vijay Kumar armed with datar, Vinod Kumar @ Lundi son of Bhuttu armed with datar, Billa son of Lazman armed with kirpan, Mahinder @ Minda son of

Lazman armed with gandasi and Ajay Sharma @ Raju son of Mulakh Raj armed with base ball bats residents of Daulatpur, Paramjit @ Pamma son of Chatar Singh resident of Prem Nagar Pathankot armed with Kirpan, Tonu son of Satpal resident of 4 marla quarter Pathankot armed with datar were standing. The allegations further go, inter-alia, that Paramjit Singh @ Pamma raised lalkara and caught hold of them. When the Complainant and his brother tried to run away along with the motor cycle then Munish Kumr armed with datar hit on the left side of neck of the Complainant. In addition to the injuries caused by other persons, which were also mentioned, it was alleged that, Ajay Sharma namely, petitioner No.2 herein; attacked with base ball bat, which hit on back side of the head of the brother of the Complainant. Accordingly, the FIR was registered. The Medico Legal Reports of injured were prepared.

After conducting the investigation, the Police did not present any challan against the present petitioners namely, Munish Kumar and Ajay Kumar. Therefore, the application under Section 319 Cr.P.C was moved by the prosecution, after examination of the Complainant before the Trial Court. The Trial Court allowed the application vide impugned Order dated 24.04.2018.

While allowing the application, the Trial Court recorded that PW-1 Narinder Singh; in his examination-in-chief; has given the details of specific role attributed to the said Munish Kumar and Ajay Kumar. Accordingly, both these petitioners/accused were ordered to be summoned to face the trial as an additional accused.

Aggrieved against the Order passed by the Trial Court, the present petitioners preferred the revision petition before the Additional

Sessions Judge, Pathankot. However, that revision petition was also dismissed by the Additional Sessions Judge, Pathankot vide Order dated 20.09.2018.

While dismissing the revision petition, the learned Additional Sessions Judge, Pathankot has also recorded that names of the present petitioners are specifically mentioned in the FIR, with specific role attributed to them. Even the witness; who has been examined before the Trial Court, has deposed to the same effect; for bringing out the same specific role against the petitioners. Therefore, the Trial Court has not committed any illegality or impropriety by allowing the application.

Learned counsel for the petitioners has submitted that Complainant, while appearing as a witness before the Trial Court; has changed his version of allegations. While in the FIR it has been alleged by him that the injuries were caused by the petitioners to the Complainant himself, in the statement recorded before the Trial Court it has been deposed that injuries were caused to the brother of the Complainant. It is further contended that the examination-in-chief of the Complainant is yet to be completed. Therefore, the incomplete statement could not have been relied upon by the Trial Court for passing order under Section 319 Cr.P.C. It is further contended that since the Doctor has not so far been examined, therefore, the petitioners could not have been summoned for an offence punishable under Section 326 IPC.

Having heard the learned counsel for the petitioners and perusing the record, this Court finds no substance in the arguments raised by learned counsel for the petitioners. It has come on record that there are specific allegations against the petitioners; as detailed in the FIR. The same

assertions have been deposed by the Complainant before the Trial Court as well. Learned counsel for the petitioners is not even factually correct in submitting that Complainant has changed his version of allegations while appearing as witness before the Trial Court. The version of Complainant while deposing as witness before the Court is on the same line as is given in the FIR.

This Court also does not find substance in the other argument of learned counsel for the petitioners that since the examination-in-chief of the Complainant is incomplete, therefore, the statement could not have been relied upon by the Trial Court for the purpose of exercising powers under Section 319 Cr.P.C. The petitioner has attached the statement of the Complainant, dated 03.07.2017, and the statement of the Doctor, dated 04.08.2017 with the present petition. A bare perusal of the statement of the Complainant shows that the case was adjourned for cross-examination of the Complainant on piece meal evidence objection of the accused. So far as the purpose of Section 319 Cr.P.C is concerned, it can not be said that the statement of the Complainant before the Trial Court was incomplete even qua examination-in-chief. Otherwise also, once the deposition has been made before the Court, that comes only in the form of evidence available before the Court. The examination-in-chief itself can be a basis for the purpose of consideration of application under Section 319 Cr.P.C, being the evidence within the definition of law. The Hon'ble Supreme Court has categorically held in ***Hardeep Singh Vs. State of Punjab and others, 2014 (1) R.C.R. (Criminal) 623*** that even the examination-in-chief of a witness can be relied upon by the Court. If the statement of the witness in the examination-in-chief only can be relied upon by the Trial Court, for the

purpose of exercising powers under Section 319 Cr.P.C, then even part of the same can also be relied upon by the Court. Hence the Order passed under Section 319 Cr.P.C can not be challenged; simply on the ground that the examination-in-chief of the witness is yet to be completed.

The next argument of learned counsel for the petitioners that the doctor has not been examined qua the injuries, therefore, the Trial Court could not have summoned the petitioners to face the trial under Section 326 IPC; also does not find favour with the Court. The statement of the Doctor attached with the petition shows that he was examined before the date of the order passed by the Trial Court. Otherwsie also, at this stage, Court is required to see that the case, which is more than prima facie, but less than the degree which is sufficient for conviction of the accused is made out. While dealing with the standard of satisfaction of the Court required for passing Order under Section 319 Cr.P.C, the Hon'ble Supreme; in the case of ***Hardeep Singh Vs. State of Punjab and others, 2014(1) R.C.R. (Criminal) 623*** have laid down the test as given below:-

“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."

In view of the above, if the Trial Court has found the evidence in the form of examination-in-chief, medical record and the allegations levelled in the FIR as sufficient for summoning the petitioners as an accused, then it can not be said that the material is not sufficient for summoning the petitioners to face trial under Section 326 IPC. Otherwise also, the opinion of the Doctor is an expert opinion. Mere absence of the opinion of the Doctor does not lead to the exoneration of the accused of the charge under Section 326 IPC. Ultimately, it is for the Court to exercise its discretion keeping in view the material available before it. This Court finds that the Trial Court has rightly exercised its discretion.

Moreover, the present petition is in the nature of second revision petition; against the order passed by the Trial Court. This Court has already held in the case of ***Sudesh and others vs. State of Haryana and another***, passed in ***CRM-M-30350-2018***, decided on ***02.08.2018*** that where the order has been passed under Section 319 Cr.P.C., the petition under Section 482 Cr.P.C would not, normally, be entertained. This Court has

held as follows:-

“So far as the present petition is concerned, this petition has been filed for invoking power of the High Court under Section 482 Cr.P.C. A bare perusal of Section 482 Cr.P.C shows that the power under Section 482 Cr.P.C can be invoked for three purposes, namely, for giving effect to the orders passed under this Court, for preventing the abuse of the process of the Court and to meet the ends of justice. In the present case, the prayer of the petitioners is not for giving any effect to any order passed by the Court. Therefore, the first eventuality prescribed under Section 482 Cr.P.C is not at all attracted. Still further, by any means, an order passed by a Court of competent jurisdiction and continuation thereof; cannot be branded as an abuse of the process of Court; unless it is alleged and shown to the High Court that the Courts below had acted for irrelevant reasons or for extraneous considerations. Needless to say that sufficiency of reasons is not to be gone into after the revisional Court. It is not even the allegation of the petitioners in this case that orders are passed by Court below; for irrelevant or extraneous considerations. So far as the third ingredient of Section 482 Cr.P.C is concerned, this Court is not supposed to go into 'legality' and 'propriety' of the order passed by the trial Court. Section 397(3) of Cr.P.C prohibits second revision by a party. Under Section 397(1),

the Revisional Court is authorised to see 'legality' and 'propriety' of the order passed by the Court. Since second revision by the same party is prohibited under Section 397(3), therefore, any argument on 'legality' or 'propriety' of an order passed by the Court below, ordinarily, is not to be appreciated in proceedings under Section 482 Cr.P.C, unless it is shown, at the macro level, that such an order has resulted from considerations which were totally alien to the process of the Court or have produced incomprehensibly absurd result and, therefore, have resulted in defeating the ends of justice itself. What cannot be done directly, cannot be done indirectly as well. In the present case, except to argue for re-appreciation of the material before the trial Court, there is not even a submission or an allegation regarding any aberration in the process adopted by the Courts for passing the impugned orders. Therefore, power under Section 482 Cr.P.C cannot be exercised by this Court to re-appreciate the same material, which was available before the Courts below and which have been duly appreciated by the Courts below.

Since the learned counsel for the petitioners has failed to point out anything extra ordinary having been committed by the Courts below, which may be alien to the process of law, therefore, the present petition is not maintainable.

For the reasons detailed above, the present petition is dismissed.

18th December, 2018

Shivani Kaushik

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No

[RAJBIR SEHRAWAT]

JUDGE