

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

**CRR No. 605 of 2019
Date of decision: 12.03.2019**

Surinder Pal

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Abhinav Gupta, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 22.02.2019, passed by the trial Court, vide which, the application filed by the petitioner under Section 319 Cr.P.C. for summoning of five additional accused, namely Paramjit Bangar, Kala, Sabbi, Bhima and Lucky, was dismissed.

Brief facts of the case are that the petitioner/complainant got FIR No. 58 dated 13.04.2017 registered under Sections 452, 323, 308 of the IPC at Police Station Maqsudan, District Jalandhar Rural with the allegations that he is having two children and his son Hardeep Kumar is residing abroad and his daughter Sarabjit is married in village Chokhan. It is further stated that he is residing alone in his house and running a Kirana shop and one gate of his shop opens in the verandah near the gate of his house. On 12.04.2017, at about 02.00 PM, he was lying in the verandah on the cot and Sukhdev Raj @ Tony, who is facing trial, came and asked for 1/2 Kg. of sugar from him and also demanded a match box and when he turned back to bring the match box, Sukhdev Raj @ Tony took out an iron

pipe from his clothes and gave a blow on his head with intention to kill him, on which, the complainant became unconscious and fell down. Thereafter, Sukhdev Raj @ Tony repeatedly attacked on the complainant's head with iron pipe which caused grievous injuries on the center of his head. On hearing the noise, Tarsem Singh and Sulakhan Singh, who is running a shop near the house of complainant, came there and rescued the complainant.

After the police submitted challan under Section 173 Cr.P.C., charges were framed against aforesaid Sukhdev Raj @ Tony under Section 452, 323 and 308 of the IPC. Thereafter, the petitioner/complainant appeared as PW-1 and reiterated the version given in the FIR that Sukhdev Raj @ Tony has caused injuries to him. It appears that eye-witnesses Tarsem Singh and Sulakhan Singh have also made statements on the similar line.

After the statement of the accused was recorded under Section 313 Cr.P.C. and the case was fixed for defence evidence, the petitioner moved an application under Section 319 Cr.P.C. for summoning the aforesaid persons as additional accused. However, the trial Court dismissed the said application by passing the following order:

“2. I have heard the learned Addl.Public Prosecutor and have perused the file very carefully. 3. The present application has been moved by the prosecution under Section 319 Cr.P.C to summon Paramjit Bangar, Kala, Sabbi, Bhima and Lucky as additional accused. The legal position with respect to the scope of the powers to be exercised under Section 319 Cr.P.C to summon a person as an additional accused has been settled by the Constitutional Bench

of the Hon'ble Apex Court in case titled as “Hardeep Singh vs. State of Punjab and others, 2014(1)-R.C.R (Crl)- 623”. It has been laid down by the Hon'ble Apex Court that the test which 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. The Hon'ble Apex Court in “Sarabjit Singh & Anr vs. State of Punjab & Anr., 2009(3)-R.C.R(Criminal)-388”, has observed that summoning of a person under Section 319 Cr.P.C should be done only when the court finds that evidence on record is such that it would reasonably lead to the conviction of person sought to be summoned. A person should not be summoned to face trial if prima facie case was made out against him. Power to summon a person can be exercised only on the basis of fresh evidence brought before the court and the power under section 319 Cr.P.C that has been conferred on the court, is a discretionary jurisdiction. It is really an extraordinary power conferred on the court, which should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. Likewise, the Hon'ble Supreme Court in “Lal Suraj @ Suraj Singh and another vs. State of Jharkhand, 2009(1)-R.C.R (Criminal)- 504”, has laid down that a person cannot be summoned to face trial on the basis of strong suspicion. The court should satisfy that there was possibility of his conviction. Before an order of summoning an accused is passed, the trial court must form an opinion on the basis of evidence before it that a case has been made out that such person could be tried together with the other

accused. 4. Here, the present case was got registered on the statement of Surinder Pal, complainant, wherein, he has stated that on 12.04.2017 at about 2.00 P.M, he was present in his house and taking rest, when Sukhdev Raj @ Tony came and demanded sugar as well as matchbox from him. When he was about to enter the shop from the 'Deori' of the house, Sukhdev Raj @ Tony took out an iron pipe fitted with iron elbow and hit on his head with force with the intention to kill him, as a result of which, he fell down on the ground. Sukhdev Raj @ Tony also gave blows of the said pipe upon him while he was lying on the ground, due to which, he suffered multiple grievous injuries on different parts of his body. On hearing his shrieks, Tarsem Singh and Sulakhan Singh alongwith other persons came at the spot and on seeing them, Sukhdev Raj @ Tony fled away from the spot. Thereafter, Tarsem Singh removed him to Civil Hospital, Jalandhar, after arranging the vehicle. He has further stated that the bone of contention is that due to party faction in the Village, Sukhdev Raj @ Tony had attacked him with intention to kill him. On the basis of this statement, present FIR was registered. Thus, a bare perusal of the statement of complainant, it reveals that there is absolutely no reference of Paramjit Bangar, Kala, Sabbi, Bhima and Lucky, which are now sought to be summoned by the prosecution. Still further, Surinder Pal, complainant, while appearing in the witness box as P.W1 on 22.08.2017, did not utter a single word with regard to involvement of the persons sought to be summoned by the prosecution. The other eye witnesses i.e., P.W2-Tarsem Singh and P.W3-Sulakhan Singh have also not named any of the

persons sought be summoned. Thus, record is quite barren with regard to involvement of the persons, sought to be summoned by the prosecution, in the commission of crime. The prosecution has simply relied upon the complaint moved to the higher Police Officers, but these are mere improvements made by the complainant. Even, complainant, while appearing in the witness box as P.W1, did not utter a single word regarding involvement of the persons, sought to be summoned by way of present application. 5. As a result of above discussion, when the present case is examined in the light of observations made by the Hon'ble Apex Court in the above referred case laws, no such case is made out for summoning Paramjit Bangar, Kala, Sabbi, Bhima and Lucky. As such, the application moved by the prosecution under Section 319 Cr.P.C is dismissed being devoid of any merit. 6. Adjourned to 26.02.2019 for defence evidence, if any, otherwise arguments shall be heard.”

Learned counsel for the petitioner has submitted that though the petitioner as well as aforesaid eye-witnesses PW-2 Tarsem Singh and PW-3 Sulakhan Singh have not named the aforesaid five persons as accused, however, in the cross-examination of the petitioner, it has come that those persons were also involved in the commission of the crime.

After hearing learned counsel for the petitioner, I find no merit in the present petition.

It is admitted fact that neither the petitioner/victim nor the aforesaid eye-witnesses have named the aforesaid five persons as accused and they are consistent with the version given in the FIR that it is Sukhdev Raj @ Tony who has caused injuries to the petitioner/complainant.

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

March 12, 2019
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No