

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-17568 of 2017

Date of decision: 27.08.2019

Makhan Lal

.. Petitioner

Versus

State of Haryana

.. Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Neha Sharma, Advocate
for Mr. S.P. Arora, Advocate
for the petitioner.

Ms. Dimple Jain, A.A.G. Haryana.

Mr. Deepak Kaushal, Advocate
for the complainant.

SURINDER GUPTA, J.

The petitioner has filed this petition under Section 482 Code of Criminal Procedure (for short, 'Cr.P.C.') seeking quashing of order dated 05.01.2016 passed by learned trial Court, whereby he was summoned under Section 319 Cr.P.C. to face trial in case bearing FIR No.130 dated 03.06.2013, registered for offences punishable under Sections 323, 324, 326 read with Section 34 of Indian Penal Code (for short 'IPC') at Police Station Sadar Dabwali, District Sirsa along with all consequential proceedings arising therefrom and also order dated 16.01.2016 passed by Additional Sessions Judge, Sirsa, whereby revision filed by the petitioner against order of summoning was dismissed.

2. As per statement of complainant-Sultan, he had given his tractor and jeep to Makhan Lal son of Ram Partap (petitioner) on rent. Both had strained relations over accounting of outstanding amount. On this score proceedings for offence punishable under Sections 107 and 150 Cr.P.C.

were initiated against them. Makhan Lal was insisting that he will take his due amount from him. On 02.06.2013 at about 09.00 p.m., complainant was lying on a cot outside his house, when Satya Narain son of Makhan Lal armed with *kassi* and Makhan Lal empty handed came there and exhorted to cause injuries to complainant. Satya Narain gave blow with *kassi* on right leg of complainant, who tried to get up and was given other blows on his head and arms. Complainant raised *raul*, which attracted his son and ladies in the house to the spot at which Satya Narain and Makhan Lal ran away from the spot.

3. The police after investigation found petitioner-Makhan Lal as innocent and presented final report under Section 173 (2) Cr.P.C. against Satya Narain son of Makhan Lal. Learned Magistrate vide order dated 05.01.2016 ordered summoning of petitioner-Makhan Lal as additional accused and revision against this order filed by petitioner was dismissed by learned Additional Sessions Judge, Sirsa.

4. Learned counsel for the petitioner submits that the police has found petitioner-Makhan Lal, who is 70 years of age, as innocent. Learned trial Court without taking any evidence with regard to involvement of petitioner in the occurrence ordered to summon him on the statement of complainant, which after investigation by the police had been found to be false.

5. Learned counsel for the complainant submits that the police while presenting challan has not given any reason for finding statement of complainant about involvement of petitioner in the occurrence as false. Learned trial Court has rightly summoned the petitioner as additional accused as a *prima facie* case was made out against him as per the statement

of complainant.

6. Learned State counsel has argued that the police during investigation had recorded statement of several witnesses and on the basis of those statements has concluded that petitioner-Makhan Lal was not present at the spot at the time of occurrence. He is an old man of 70 years and was found to have been named as accused because of money dispute between petitioner and complainant.

7. Apex Court in case of **Hardeep Singh vs. State of Punjab, 2014 (2) SCC (Cri) 86** observed in para 98 as follows:-

“98. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.”

8. It was observed by the Apex Court that before summoning of additional accused the Court 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. In the absence of any such satisfaction, the Court should refrain from exercising power under Section 319 Cr.P.C.

9. As per submissions of learned State counsel, police after investigation had ruled out the presence of petitioner at the place of occurrence. While summoning petitioner as additional accused, learned trial

Court has relied on the statement of complainant wherein he has reiterated

his statement before the police, which was found false during investigation to the extent of involvement of petitioner in the occurrence. Learned trial Court without looking into the fact that no new evidence to discard the investigation of the police has come on record ordered summoning of the petitioner in a mechanical manner with the observation that sufficient material has come on record to implead petitioner-Makhan Lal as accused. Learned lower revisional Court though referred to observations in the case of **Hardeep Singh (supra)** but has also not looked into above quoted observations of Apex Court in that case.

10. As a sequel of my above discussion, I am of the considered opinion that no new material has come before learned trial Court about complicity of petitioner in the present case. It has acted on the same statement of complainant, which on investigation was found to be not correct qua presence of petitioner at the place of occurrence. The test as laid down by Apex Court in case of **Hardeep Singh (supra)** were not applied while summoning the petitioner as additional accused. The orders of Courts below are perverse. This petition has merit and the same is accepted. Order of learned trial Court dated 05.01.2016 affirmed by the revisional Court vide order dated 16.11.2016 is set aside.

August 27, 2019

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No