

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

1. CRM-M-30872-2014

**State through subsequent complainant
Vikramjit Singh Nanda**

...Petitioner

Versus

Bakshish Singh and another

...Respondents

2. CRM-M-14136-2018

Vikramjit Singh Nanda

...Petitioner

Versus

State of Punjab and another

...Respondents

3. CRM-M-32559-2015

Vikramjit Singh Nanda

...Petitioner

Versus

State of Punjab and others

...Respondents

Reserved on 23.01.2019
Pronounced on: 30.01.2019

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

**Present:- Mr. M. S. Bajwa, Advocate
for the petitioner.**

Mr. Sidakmeet Sandhu, DAG, Punjab.

**Mr. S. S. Behl, Advocate
for the private respondents.**

ARVIND SINGH SANGWAN, J.

This common order shall dispose of above noted three criminal petitions as they arise out of the same incident.

CRM-M-30872-2014

Prayer in this petition, filed under Section 482 Cr.P.C., is for setting aside the order dated 26.03.2014, passed by the trial Court, vide which, the application filed by the petitioner under Section 319 Cr.P.C. for summoning additional accused was dismissed; as well as the order dated 11.07.2014, passed by the Additional Sessions Judge, Tarn Taran, whereby the revision, filed by the petitioner, was also dismissed.

CRM-M-14136-2018

Prayer in this petition, filed under Section 482 Cr.P.C., is for setting aside the order dated 21.02.2018, vide which, the application filed by the petitioner under Section 311 Cr.P.C. for leading additional evidence was dismissed by the trial Court.

CRM-M-32559-2015

Prayer in this petition, filed under Section 482 Cr.P.C., is for setting aside the order dated 07.09.2015 passed in Criminal Complaint No. 130 of 2005, vide which the trial Court has refused to summon the witnesses through Senior Superintendent of Police, Tarn Taran, considering it to be a complaint case.

Facts of the case

Brief facts of the case are that an FIR No. 47 dated 26.02.2005 was registered under Sections 448, 166, 167 and 120-B of the IPC by the complainant/father of petitioner, namely Late Tilka Raj Nanda, against two

persons namely Bakshish Singh and Beant Singh and 20/21 unidentified persons with the allegations that they have trespassed the poultry farm of the complainant and caused injuries to him and has connived with revenue officials in forging the *jamabandi* of the land belonging to poultry farm as *Chahi* land.

During the pendency of the trial, original complainant Tilak Raj Nanda died on 17.06.2011 and his son Vikramjit Singh Nanda is now prosecuting the same.

After the police submitted a challan, the complainant also filed Criminal Complaint No. 130 of 2005, titled as ***Tilka Raj Nanda vs. Amritbir Singh and others*** and submitted that the offence committed by the accused in the FIR case as well as in the complaint case is the same and since the police did not array all the accused persons, therefore, the complainant filed aforesaid complaint and the trial Court, vide order dated 23.10.2007, summoned the additional accused to face the trial. Later on, the petitioner moved an application under Section 210 Cr.P.C. for clubbing of both the cases, i.e. FIR case and complaint case, however, the prayer was declined by the trial Court, vide order dated 27.02.2013 and it was directed that both the cases be fixed together but the evidence be recorded separately.

After the petitioner recorded PW-1 Rajiv Kumar Nanda as a prosecution witness, an application under Section 319 Cr.P.C. was filed for summoning some more additional accused. In the application, the petitioner named as many as 16 new persons by stating that they have also committed the offence of house trespass and committed a theft but the police did not

present the challan against them.

The trial Court, vide impugned order dated 26.03.2014, dismissed the aforesaid application filed under Section 319 Cr.P.C. The operative part of the order reads as under:

“2. I have heard the Ld. APP for the State and gone through the file very carefully. In this case FIR was registered on the statement of complainant Tilak Raj Nanda. A perusal of police record transpires that the case was registered against five persons and two persons are already facing trial before this Court, whereas one accused named Ramesh Chander Handa was discharged by my Ld. Predecessor and other accused namely Amarjit Singh and Bakshish Singh got expired during the proceedings and the persons to whom prosecution want to summon as additional accused have not been kept even in column No. 2 of the challan. During the investigation of this case, an enquiry was conducted by ASI Sucha Singh and Harminder Singh SP Head Quarter and it was found that only the persons who have been challaned were involved of the commission of offences alleged by the complainant and in the FIR also no specific allegations were leveled against other accused. Now the complainant improved her version which was contained in her statement made to police. No new evidence has come on record. FIR in this case was registered under Sections 448, 166, 167, 120-B of IPC and the challan was presented. It is settled law that powers under Section 319 Cr.P.C. should be exercised sparingly and that when the evidence produced on record is such which would reasonably lead to conviction of a person sought to be

summoned.

In this regard law has been aptly summed up by Hon'ble Apex Court in case titled as Sarabjit Singh and another Vs. State of Punjab 2009 (3) RCR (Cr.) 388 that “a person should be summoned only when court finds that evidence on record is such which would reasonably lead to conviction of a person sought to be summoned.” It has also been held that “this is really an extraordinary power which is conferred on the court should be exercised very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken.”

Recently in Sarojben Ashwinkumar Shah vs. State of Gujarat 2011 (3) RCR (Cr.) 852 SC, it has been held by Hon'ble Apex Court that “the power to proceed against any person, not being the accused before the court, must be exercised only where there appears during inquiry or trial sufficient evidence indicating his involvement in the offence as an accused and not otherwise.” It is further held that “the word 'evidence' in Section 319 contemplates the evidence of witnesses given in Court in the inquiry or trial and the Court cannot add persons as accused on the basis of materials available in the charge-sheet or the case diary but must be based on the evidence adduced before it.” In other words, the Court must be satisfied that a case for addition of persons as accused, not being the accused before it, has been made out on the basis of additional evidence led before it.

3. In the present case, the complainant has not reiterated the same story regarding the number of

accused involved in the crime, which was stated by him to the police and from her statement recorded by way of examination in chief, is only the improvement of his version given to police regarding the involvement unknown persons, but no further evidence has come on record, which may warrant the exercise of extraordinary powers conferred on Court by Section 319 of Cr.P.C.

4. Therefore, I find no merit in the present application. Hence the same is hereby dismissed. Now to come up on 05.04.2014 for evidence of prosecution. Witnesses be summoned.”

Thereafter, the petitioner filed a revision before the Court of Sessions, however, the same was also dismissed by the Additional Sessions Judge, Tarn Taran, vide order dated 11.07.2014. It was observed in the order that two of the proposed accused, namely Amarjit Singh and Bakshish Singh, have already died and on the basis of the inquiry, conducted by ASI Sucha Singh and approved by S. P. (Hq.), it was found that only two persons, qua whom the challan was presented, were involved in the incident and, therefore, the revision petition was dismissed. The petitioner has challenged the aforesaid orders in CRM-M-30872-2014.

During the pendency of this petition, since there was no stay of proceedings, the trial Court continued with the proceedings and on 30.03.2017, an objection was raised by the respondents that the petitioner is not concluding the trial which is pending since 2005 and moving repeated applications before the trial Court just to delay the conclusion of trial.

Arguments

It is argued on behalf of the petitioner that it has come in the

statement of PW-1 Rajiv Kumar Nanda that both the accused, who were facing trial along with proposed accused as named in 319 Cr.P.C. application, in conspiracy with each other, have committed the offence of criminal trespass and have caused injuries to the complainant and have also committed theft of the property. It is also argued that both the Courts below have not considered the well settled proposition of law that when the petitioner has already filed a criminal complaint, in which some of the persons have already been summoned which shows that prima facie offence is made out, however, when the trial Court dismissed the application filed under Section 210 Cr.P.C. on 23.10.2007 to club both the cases and rather directed that both the cases be tried together but the evidence be recorded separately, the petitioner had moved the instant application under Section 319 Cr.P.C. for summoning those persons as additional accused.

As noticed above, during the pendency of the present petition, the trial Court was proceeding with the case and the evidence of the prosecution was closed on 15.12.2016 after a period of nine years from the date of framing of charge i.e. 30.07.2007. Thereafter, the petitioner filed an application under Section 311 Cr.P.C. for summoning of material witnesses. In the application, it was stated that the examination-in-chief of PW-1 Rajiv Kumar Nanda, PW-2 Ramesh Chander and PW-6 Palwinder Singh was conducted on 20.12.2014, 13.03.2014 and 12.10.2015 respectively, but the cross-examination was deferred and thereafter, these witnesses were not summoned by the trial Court. Therefore, it was prayed that the aforesaid application seeking to lead additional evidence be allowed and aforesaid witnesses be summoned again for concluding the cross-examination.

However, the trial Court, vide order dated 21.02.2018, dismissed the application. This order is challenged by the petitioner in CRM-M-14136-2018.

Learned counsel for the petitioner has submitted that on account of pendency of application under Section 319 Cr.P.C., the cross-examination of aforesaid witnesses was deferred and these witnesses were never summoned to face the cross-examination, therefore, the application filed by the petitioner under Section 311 Cr.P.C. should be allowed and petitioner may be given opportunity to cross-examine these witnesses.

In reply, learned counsel for the respondents has argued that petitioner/State has availed of as many as 34 opportunities and the orders are reproduced in the petition itself which shows that many of the prosecution witnesses were examined subsequently and cross-examined by the counsel for the accused persons, however, despite availing 34 opportunities, in which in addition to above 03 prosecution witnesses, 12 more witnesses were examined and, therefore, the cross-examination was completed. The petitioner/State has failed to produce the aforesaid witnesses on record. It is further argued that the evidence of the prosecution was closed by order on 15.12.2016 and that order has attained finality as the petitioner never challenged the same, rather, he moved an application under Section 311 Cr.P.C. for leading additional evidence which amounts to filling up of lacunas.

Learned counsel for the respondents further argued that a period of more than ten years has passed as charges were framed on 30.07.2007 and the petitioner and accused persons are regularly appearing

before the trial Court and are facing agony of protracted trial, however, the petitioner is not allowing the trial Court to conclude the trial by filing applications or petitions.

In the complaint filed by the petitioner, which is being heard along with the FIR case, however, evidence is being recorded separately, the petitioner moved an application for summoning some of the prosecution witnesses through the office of S.S.P., Tarn Taran, however, the said application was dismissed by the trial Court, vide order dated 07.09.2015. This order is challenged by the petitioner in CRM-M-32559-2015.

Learned counsel for the petitioner has submitted that this Court has granted two opportunities to the petitioner to conclude the pre-charge evidence, vide order dated 06.08.2015 passed in ***CRR No. 2858 of 2014***, however, since the witnesses which the petitioner wants to examine are not appearing, a direction may be issued to summon the witnesses through the office of S.S.P., concerned or in the alternative, the petitioner be granted *dasti* process to produce the witnesses.

Learned counsel for the respondents has submitted that there was no such direction in the aforesaid order dated 06.08.2015 to serve the witnesses through S.S.P., concerned, rather a direction was given that the trial Court will dispose of the complaint within a period of six months, however, said complaint is still pending and the petitioner is delaying the same.

Observations

CRM-M-30872-2014

After hearing learned counsel for the parties, I find no ground

to interfere in the orders dated 26.03.2014, passed by the trial Court dismissing the application filed under Section 319 Cr.P.C. as well as the order dated 11.07.2014, vide which the revision, filed by the petitioner was dismissed.

Admittedly, the petitioner, for the same offence, has already filed a Criminal Complaint No. 130 of 2005, in which some of the persons have been summoned and the complaint is being tried with the FIR case, though not clubbed with the same, however, the evidence is being recorded separately. Moreover, both the Courts below have rightly held that petitioner is changing the stand and no evidence worth more than prima facie evidence to frame charge has come on record to summon the additional accused.

Therefore, finding no ground to interfere in the impugned orders dated 26.03.2014 and 11.07.2014, this petition is **dismissed**.

CRM-M-14136-2018

So far as the prayer made in this petition is concerned, though the petitioner has availed of as many as 34 opportunities and the accused persons are facing trial since 2005, however, still considering the fact that the examination-in-chief of the aforesaid three witnesses were conducted way back in the year 2014 but they could not be produced for their cross-examination, I deem it appropriate to grant two effective opportunities to the petitioner to cross-examine the aforesaid three witnesses.

Accordingly, petition bearing CRM-M-14136-2018 is **partly allowed** and the trial Court is directed to grant two effective opportunities to petitioner for summoning PW-1 Rajiv Kumar Nanda, PW-2 Ramesh

Chander and PW-6 Palwinder Singh through process of Court for their cross-examination, however, this will be subject to payment of cost of Rs. 30,000/- to be paid to the private respondent.

The payment of cost shall be a pre-condition before issuing summons to the aforesaid three witnesses.

It is made clear that these witnesses shall be cross-examined within a period of one month from the date of receipt of certified copy of this order.

CRM-M-32559-2015

After hearing learned counsel for the parties, I find no ground to set aside the order dated 07.09.2015 passed in Criminal Complaint No. 130 of 2005, vide which the trial Court has refused to summon the witnesses through Senior Superintendent of Police, Tarn Taran.

A perusal of the order dated 06.08.2015 passed in **CRR No. 2858 of 2014** shows that the petitioner, whose evidence was earlier closed, was granted only two opportunities to conclude his evidence and the petitioner had the opportunity to pray before this Court at the time of passing of order dated 06.08.2015 that while leading evidence, he may be granted the assistance through the office of S.S.P., Tarn Taran, however, in the absence of any such prayer made in earlier petition, I find no ground to interfere in the order dated 07.09.2015, passed by the trial Court.

Accordingly, this petition is **dismissed**.

January 30, 2019

Waseem Ansari

Whether speaking/reasoned
Whether reportable

(ARVIND SINGH SANGWAN)
JUDGE

Yes
Yes