

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-33597-2017 [O&M]
Date of Decision : February 20, 2019

Sukhdarshan Singh and another Petitioners

Versus

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Mandeep K. Sajjan, Advocate,
for the petitioners.

Mr. APS Gill, DAG, Punjab.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing of order dated 13.02.2017 (Annexure P/5) passed by learned Sub Divisional Judicial Magistrate, Zira whereby the present petitioners were ordered to be summoned as additional accused by invoking the powers under Section 319 Cr.P.C. in case bearing FIR No. 141 dated 09.08.2013 under Sections 325, 323, 34 of Indian Penal Code registered at Police Station Zira, District Ferozepur and the order dated 11.08.2017 (Annexure P/7) passed by learned Additional Sessions Judge, Ferozepur whereby revision petition filed by the petitioners was dismissed.

2. Facts relevant for the purpose of decision of the present petition; that FIR No. 141 dated 9.8.2013 was got recorded on the statement of complainant, Bohar Singh and after investigation, challan was

presented in the Court. However, the complainant was not satisfied with the investigation having been done by the Police and he moved an application under Section 319 Cr.P.C. for summoning of both the petitioners, namely, Sukhdarshan Singh and Jagjot Singh as additional accused as both of them had caused injuries to Jujhar Singh.

3. Learned counsel for the petitioners contended that learned Courts below have not considered the relevant facts of the case because after investigation, challan had already been presented before the Court and no fresh evidence had come before the trial Court except the statement of complainant, Bohar Singh. Said Bohar Singh had every reason to depose falsely against the petitioners because of the previous litigation between the parties and the dispute is primarily revolving around a possession of piece of land. However, both the Courts below have not considered this aspect while passing the impugned orders and as such, the present revision petition be accepted and the orders passed by the Courts below, Annexures P/5 and P/7 be set-aside.

4. Learned State counsel, while arguing this point, contended that the impugned orders were passed on the basis of statement made by complainant, Bohar Singh, who had specifically alleged that both the petitioners had caused injuries with their respective weapons i.e., 'Dang' and 'kapa' and learned trial Judge has rightly exercised the discretion vested in him under Section 319 Cr.P.C. and learned Additional Sessions Judge has rightly dismissed the revision petition.

5. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case file, this Court is of the considered view that certain facts are not disputed that after charge having

been framed by the learned trial Judge, complainant - Bohar Singh appeared before the Court and made statement wherein he had levelled specific allegations that petitioner Sukhdarshan Singh caused injury to Jujhar Singh with his 'Dang' and as per MLR that injury is at Sr. No. 2 and petitioner Jagjot Singh had caused injuries with 'kapa' blow on the right leg of Jujhar Singh. As such, they were ordered to be summoned as additional accused.

6. That being so, it had come on the basis of statement of Bohar Singh that both the petitioners had caused injuries to Jujhar Singh and as such, learned trial Judge had rightly exercised the discretion lawfully vested in him under Section 319 Cr.P.C.

7. As regard to previous civil litigation between the parties, taking the same to be correct, at the best it can be a case of motive on the part of the complainant to implicate the accused. However, it is settled proposition of law that motive is double edged weapon and it is for the Court to decide whether the motive has been used to falsely implicate any person or not. In the present case, learned trial Judge has already applied its judicious mind and considered that there is specific attribution to the present petitioners regarding causing of injuries and same is supported by medical evidence. There was nothing wrong on the part of learned trial Judge to say so *at least* for summoning of the petitioners as accused persons while exercising powers under Section 319 Cr.P.C. However, this Court refrains to make any observation on merits of this case at this stage so that the same may not cause any prejudice to the parties at a later stage.

8. There is no dispute on the fact and legal proposition that

Section 319 Cr.P.C. confers wide powers upon learned trial Judge to summon any body as an additional accused if there is sufficient material available on the file. Needless to say, the power is to be exercised judiciously. But at the same time, Section 319 Cr.P.C. does not limit the power of the Court to restrict itself to the investigation proceedings only. Otherwise, the purpose of Section 319 Cr.P.C. is that if the investigation has not been done in a fair and proper manner, the complainant can approach the Court and learned trial Magistrate after considering the investigation proceedings as well as additional material having been placed before the court, can pass the order to summon such a person as an additional accused against whom some material comes on the file.

9. Similar matter was before the Constitution Bench of Hon`ble Apex Court in **Hardeep Singh Vs. State of Punjab and others, 2014(3) SCC 92**, and Hon`ble Apex Court observed as under:-

“8. The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the Accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under Code of Criminal Procedure indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the

Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished.

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12. Section 319 Cr.P.C. springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said Accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 Cr.P.C.?

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19. The court is the sole repository of justice and a duty is cast upon it to uphold the Rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an Accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.”

10. Needless to say that it is the duty of the Court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the Court is not powerless in calling the said accused to face trial. Section 319 Cr.P.C.

allows the Court to proceed against any person who is not an accused in a case before it.

11. Applying the same principle of law to the present set of facts, learned Magistrate has exercised its judicious discretion while placing reliance upon the statement on oath having been made by complainant – Bohar Singh before the Court and the said order has already been affirmed by learned Additional Sessions Judge.

12. As such, the present petition is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

February 20, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes