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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-36096-2017

Date of Decision : January 18, 2019

Gurdeep Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. B.S. Jatana, Advocate,
for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab,
for respondent-State (No.1).

Mr. Jagbir Singh Brar, Advocate,
for respondent Nos. 2 and 3.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for setting aside order dated 9.3.2017 (Annexure P/3) passed by learned Sub Divisional Judicial Magistrate, Samana whereby application under Section 319 Cr.P.C. was dismissed and for setting aside order dated 11.7.2017 (Annexure P/4) whereby revision petition filed by the petitioner was also dismissed by learned Additional Sessions Judge, Patiala.

2. Facts relevant for the purpose of decision of the present petition; On the basis of statement of the petitioner, who is complainant in this case, FIR No. 22 dated 09.02.2015 under Sections 454, 380, 427,

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447, 511, 506, 148 and 149 of IPC was registered at Police Station Samana, District Patiala, wherein respondent No. 2, Baljinder Kaur and respondent No. 3, Rajwinder Kaur alongwith accused namely, Ajit Singh, Avtar Singh and Jaimal Singh were arrayed as accused. However, on the basis of investigation, final report under Section 173 Cr.P.C. was submitted against Jeet Singh, Avtar Singh, Jaimal Singh and Fateh Singh whereas Baljinder Kaur and Rajwinder Kaur were put in column No.2. Charge was framed against the accused persons against whom challan was submitted and thereafter statement of the petitioner was recorded as PW-1 and the petitioner reiterated his earlier version as put-forwarded in the FIR. The allegations against respondents No.2 and 3 are that they along with other co-accused entered the house of the petitioner by jumping over the wall. They were duly armed with weapons and gave beating to the petitioner and his wife, Narinder Kaur. All the accused persons started throwing the household articles of the petitioner and they took away about 5 Tolas of gold, about Rs.1.00 Lakh and some other articles from the house of the petitioner and also took away their mobiles. Respondents No. 2 and 3 were arrested on the same day near the place of occurrence. As such specific role was attributed to respondent Nos. 2 and 3 in the statement of of the petitioner, i.e. PW-1, but they were not summoned as additional accused on an application under Section 319 Cr.P.C. having been filed by the petitioner and the same was dismissed vide order dated 9.3.2017 (Annexure P/3) passed by learned Sub Divisional Judicial Magistrate, Samana. The revision petition filed by the petitioner against the said order, Annexure P/3, was also dismissed by learned Additional Sessions Judge, Patiala vide order dated 11.7.2017 (Annexure P/4). Both these

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orders, i.e., Annexures P/3 and P/4 are under challenge before this Court in the present petition.

3. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that for consideration of application under Section 319 Cr.P.C., the Court has been given ample powers to summon any body as an additional accused. It is also not disputed that respondents No.2 and 3 were initially arrayed as accused in this case. As per the version of the petitioner, who is complainant in the present case, on investigation, both of them were found innocent. Learned trial Judge, on the basis of material before the Court below, and as per statement of petitioner, Gurdeep Singh (PW-1), did not find any material to summon them as additional accused. In view of the observations having been recorded by learned trial Judge, which have been affirmed by learned Additional Sessions Judge while deciding the revision petition on 11.7.2017, this Court is of the considered view that learned trial Judge has already applied its judicious mind and on the basis of material available on record, application under Section 319 Cr.P.C. was dismissed.

4. It is also settled proposition of law that the Court while exercising powers under Section 319 Cr.P.C. shall not be bound by the statements made by the complainant or the witnesses examined by him nor the Court shall be bound by the investigation having been done and the final report under Section 173 Cr.P.C. having been submitted by the Police, but the Court is to consider the matter in its entirety and to see whether the persons named in the application under Section 319 Cr.P.C. are required to be summoned as additional accused and there is

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something by way of evidence so as to summon them as accused because summoning of any person as an accused certainly effects his freedom adversely. Learned trial Magistrate has rightly taken the view in the matter thereby considering all the facts and material and evidence available on the file and the same has been affirmed by learned Additional Sessions Judge while deciding the revision petition. There is absolutely no illegality in the orders under challenge.

5. Resultantly, the revision petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

January 18, 2019
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes