

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

**Criminal Revision No.1044 of 2019 (O & M)
Date of Decision:-18.07.2019**

Dharam Singh and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present:- Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Vishal Garg Narwana, Advocate
for the petitioners.

Mr. Sanjay Kumar Saini, AAG, Haryana.

Mr. Deepender Singh, Advocate
for respondent No.2.

MANOJ BAJAJ J.

Petitioners have preferred this revision petition to challenge the order dated 10.4.2019 passed by the Additional Sessions Judge, Gurugram, whereby the application under Section 319 Cr.P.C. filed during trial of case FIR No.635 dated 22.12.2016, under Sections 147, 148, 325, 307, 323 and 506 IPC, registered at Police Station Badshahpur, District Gurugram, moved by the prosecution was allowed by summoning the petitioners as additional accused.

The facts in brief leading to the present petition are that on the

statement of Gobind s/o Mahender Singh, the above mentioned FIR was registered, wherein it was alleged that the complainant was doing agricultural work and owned half acre of agricultural land near the house of accused Jagpal. Earlier, in the year 2000, Bijender (deceased) and his mother Malhi Devi were assaulted by Dharam Singh, Pappu @ Pal and Braham Pal and a case in that regard was registered with Police Station Sadar, Gurugram. During trial of the said case Bijender (deceased) and Malhi Devi made depositions before the trial Court. In the year 2002, Dharam Singh, Pappu @ Pal, Nar Singh, Braham Pal and Bhim s/o Hari Chand assaulted uncle of the complainant, namely, Bijender and in that regard too, a separate FIR in Police Post Badshahpur was recorded. Later on in the year 2003, Dharam Singh and Pappu @ Pal etc. had given a written apology before the Panchayat in respect of the incident and assured that nothing like this will happen in future. After the apology, Bijender had withdrawn his case. In the month of June 2016, accused Jagpal, Amit and Kuldeep tried to take possession of their field by putting bricks and other building material. Against this act of the accused persons, complainant moved two complaints against them in Police Station Badshahpur in June 2016. Despite that after two months the said accused persons again tried to take illegal possession of the field. In this regard uncle of the complainant, namely, Jeet Ram had again moved a complaint against the accused persons in the Police Station Badshahpur. On 22.12.2016, accused Jagpal tried to take illegal possession of their field and used JCB Machine. The complainant gave information to the police in this regard. After some time,

the police came but they pacified both the parties and went away. About half an hour later to this incident, accused Dharam Singh, Ajit, Pappu, Rocky and Rakesh @ Tinkle, Sahil, Braham Pal, Jagpal, Amit, Kuldeep, Narsingh and Dharmender came to their house. On seeing them, the complainant alongwith his uncles Indraj and Bijender (since deceased) came outside the house. After that all the accused attacked them. Accused Mast Ram gave a rod blow on the right side of the head, accused Rocky gave a lathi blow on the right side of his skull. Kuldeep gave a lathi blow on his left leg and Jagpal gave a lathi blow on his right hand and he fell down. His uncle Bijender was assaulted by Jagpal and Mast Ram with iron rod and lathi respectively. Accused Rakesh @ Tinkle, Kuldeep and Braham Pal assaulted his uncle Indraj with the help of lathies and dandas. His sister mahesh was also assaulted by Ajit, Braham Pal and Jagpal by lathies and dandas. After hearing the hue and cry, Ved Pal and Dharambir came to rescue and on seeing them accused persons ran away. Thereafter, the injured were admitted to Ektaa Hospital, Badshahpur. Bijender (deceased) was shifted to some other hospital. The police has recorded his statement (Ex.P-14). Thereafter, said Bijender remained admitted in Paras Hospital, Gurugram for five days and then transferred to Alpine Hospital, Gurugram because of head injuries and expired after six months.

After registration of the case, the investigation was carried out and final charge-sheet under Section 173(2) Cr.P.C. was submitted against six persons, namely, Mast Ram, Ajit, Jagpal, Kuldeep, Rakesh and Bharampal, whereas, seven persons (petitioners) were found innocent.

After framing of charges, the trial commenced and the prosecution examined its witnesses. The complainant, namely, Gobind was examined as PW8 and after his examination-in-chief, an application under Section 319 Cr.P.C. was moved by complainant through the Public Prosecutor.

The trial Court vide its order dated 10.4.2019 allowed the application and proceeded to summon the petitioner as additional accused to face trial alongwith other accused persons.

Learned senior counsel appearing on behalf of petitioners has submitted that the trial Court has adopted the very casual approach for accepting the application under Section 319 Cr.P.C. without even recording the satisfaction that the evidence recorded during trial is sufficient to suggest the participation of the petitioners in the alleged crime. He submits that the deceased, namely, Bijender had suffered only one head injury and the FIR was lodged by the complannant to indict 13 persons. According to him the deceased had died after six months of the alleged occurrence and the police during investigation found all the petitioners innocent as the petitioners were not involved in the crime. It is vehemently contended that all the petitioners were ran away from the alleged place of occurrence at the time of incident and the trial Court without even referring to the innocence of the petitioners, as placed by the investigating agency, has wrongly proceeded to allow the application. It is prayed that the impugned order be set aside.

On the other hand, the prayer is opposed by learned counsel appearing on behalf of complainant/respondent No.2 as well as learned

State counsel.

Learned counsel for the complainant has argued that all these persons were named by the complainant from the very beginning and the evidence of the complainant before the Court as PW8 also sufficient for exercising the power under Section 319 Cr.P.C. He submits that the trial Court has examined the material on record and has rightly exercised the jurisdiction to summon the petitioners herein as accused.

After hearing learned counsel for the parties, this Court finds that the trial Court has simply relied upon the evidence of complainant (PW8) while accepting the application under Section 319 Cr.P.C. Of course the deposition of the complainant echoes the voice of version as recorded in the FIR, but that alone may not be enough for exercising the power under Section 319 Cr.P.C. as laid down by this Court as well as by the Hon'ble Supreme Court in number of pronouncements.

It is settled law that provisions under Sections 319 Cr.P.C is to be exercised sparingly and only in the cases where there is strong suspicion clearly indicating the involvement of the accused in the crime. This power is not to be exercised in a routine or in a mechanical manner. At this stage, it will be useful to refer the judgment passed by the Hon'ble Supreme Court in “***Labhuji Amratji Thakor and others Vs. State of Gujarat and another***” wherein in respect of power under Section 319 Cr.P.C, the following observations were made:-

“The High Court does not even record any satisfaction that the evidence on record as revealed by the statement of victim and her mother even makes out a prima facie

*case of offence against the appellants. The mere fact that Court has power under Section 319 Cr.P.C to proceed against any person who is not named in the FIR or in the charge sheet does not mean that whenever in a statement recorded before the Court, name of any person is taken, the Court has to mechanically issue process under Section 319 Cr.P.C. The Court has to consider substance of the evidence, which has come before it and as laid down by the Constitution Bench in **Hardeep Singh (supra)** has to apply the test, i.e. "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."*

A perusal of the impugned order reveals that the trial Court has not noticed anything else except the argument on behalf of complainant and proceeded to held that there is sufficient material before this Court to summon Dharam Singh, Pappu @ Pal, Nar Singh sons of Ibdali, Sahil and Rockey sons of Pappu @ Pal, Dharmender son of Nar Singh and Amit son of Jagpal (petitioners) as additional accused in the present case.

At this stage, it is necessary to highlight the contents of the application filed by the complainant under Section 319 Cr.P.C. The brief contents of the application simply founded on the presumption as the leading ground for summoning the petitioners as additional accused. It is pleaded in the application that the presence of the persons, sought to be summoned as additional accused on the spot at the relevant time, is sufficient to raise presumption of their culpability in the crime. Further the final report submitted by the police under Section 173 Cr.P.C. was also

doubted by the complainant. Since out of 13 accused, only six were indicted and seven were declared innocent, therefore, it was incumbent upon the trial Court to look into that aspect of the case as well as to ensure that the evidence recorded during trial indeed suggest the participation of the said persons in the crime. The impugned order does not reflect any such appreciation of the material or other attending circumstances.

In view of the above, the trial Court has exercised the jurisdiction without taking into consideration the entire material on record, therefore, the impugned order dated 10.4.2019 passed by the trial Court is not sustainable and the same is set aside. The case is remanded back to the trial Court for deciding the application under Section 319 Cr.P.C. afresh after considering the entire material.

Disposed off.

July 18, 2019
Vijay Asija

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No