

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

**CRM-M-43463-2015
Date of decision-April 12, 2019**

Sita Ram Sharma and othersPetitioners

Vs.

State of U.T.Chandigarh and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. H.S.Jaswal, Advocate for the petitioners.

Mr. Rajiv Sharma, APP, U.T.Chandigarh.

Mr. V.B.Aggarwal, Advocate
for respondent Nos.2 and 3.

MANOJ BAJAJ, J.

The petitioners-Sita Ram Sharma, Bipin Sharma and Kumer Chand have filed this petition under Section 482 of Code of Criminal Procedure to challenge the order dated 05.11.2015, passed by Additional Sessions Judge, Chandigarh whereby revision petition against the order dated 13.03.2015 passed by the trial Court, allowing the application of the complainant to array the petitioners as additional accused, stands dismissed.

The facts in brief leading to the petition are that on a complaint given by Simarjit Singh (respondent No.2) FIR No.357 dated 03.11.2007 was registered under Sections 147, 148, 326 and 506 read with Section 149 of Indian Penal Code at Police Station Sector-11, Chandigarh against the petitioners. As per the version in the original complaint, it was alleged that complainant along with his family and parents was residing at House

No.749, Ist Floor, Milk Colony, Dhanas, which is in the name of his father. In the year 2005, his father (respondent No.3) entered into a deal to sell the ground floor of the said house with Bipan Sharma son of Sita Ram. According to the version of the complainant, possession of the ground floor was with Bipan Sharma. It was further alleged that a dispute between the parties arose and litigation commenced. As per the allegations, on 03.11.2007, one Joginder Singh who claimed himself as tenant of Bipan Sharma, who in consultation with Bipan Sharma and his father (Sita Ram), brought five to six hindu young men in the room of the ground floor of this house. It was around 6.30 a.m. when complainant along with his father came down from the first floor and when he was about to start the motorcycle then Joginder Singh armed with iron khanjar along with 5 to 6 associates came out from the ground floor of the house No.749 and raised lalkara to his 5-6 companions and pointed towards complainant and his father. He asked to catch hold of them. It was narrated that two companions of Joginder Singh caught hold of the complainant and started giving beatings and Joginder Singh stopped his father with the help of his three associates and by holding him, Joginder Singh attacked his father with iron khanjar held in his hand. When complainant's father raised his hand for safety then Joginder Singh attacked with iron khanjar on his eye-brow and caused injuries and by throwing down gave him beatings with fist blows. When they raised noise, all the assailants fled from the spot. The FIR is Annexure P-1.

During investigation, statement of the father of the complainant-Jatinder Pal Singh was recorded on 06.12.2007 which reiterates

the version given by complainant which is on record as Annexure P-2.

After completion of investigation, final report under Section 173 Cr.P.C was submitted by Police on 26.05.2008 wherein petitioners were found innocent. After commencement of trial, the evidence of complainant-respondent No.2 was recorded as PW-1 on 11.02.2012 whereas the statement of his father i.e. respondent No.3 was recorded on 25.10.2012. It was at this stage, an application dated 11.02.2015 under Section 319 Cr.P.C was moved by the complainant to summon the petitioners as additional accused.

In the application, it was specifically pleaded that the complainant at the time of registration of FIR, had categorically alleged that Bipan Sharma, Sita Ram and Kamer Chand raised alarm and shouted that "*Jatinder Pal ja raha hai enu phad ke maaro*". It is further pleaded that despite there being specific allegations against them, the Police did not arraign them as an accused.

Relying upon the evidence before the Court, it was prayed that there is sufficient material to summon these three persons, namely, Bipan Sharma, Sita Ram and Kamer Chand as additional accused. The trial Court vide its order dated 13.03.2015, proceeded to summon the accused. Aggrieved against this, revision petition was filed by the petitioners, however, the same was dismissed vide order dated 05.11.2015.

Learned counsel for the parties have been heard and with their assistance I have gone through the case file carefully.

Reading of the original statement recorded on 03.11.2012

(Annexure P-1) reveals that complainant had given the particulars of this occurrence, wherein a specific role of causing injuries was attributed to accused-Joginder Singh and other associates. The two persons, namely, Bipan Sharma and Sita Ram were admittedly previously known to the complainant with whom the litigation had allegedly started. However, their names are nowhere mentioned. The allegations were that two companions of Joginder Singh caught hold of complainant and thereafter, Joginder Singh stopped his father with the help of three associates and caused injuries to his father. If the persons were already known to the complainant, it does not appeal to prudence as to why their names were not mentioned by the complainant in the first version. The person who had caused injuries were challaned and are facing trial. The utterance as attributed in the application to the newly arrayed accused is missing in the first version as well as in the FIR . It is not in dispute that during investigation these three persons were associated, however, after completion of investigation they were found innocent and the challan was filed against Joginder Singh, Ajay Kumar and Jai Kishan.

The trial Court proceeded to summon the accused-petitioners as an accused only on the basis of the statement of PW-1 and PW-2 without giving any reasons as to how the evidence is sufficient to indicate the involvement of petitioners as an accused in the crime. The trial Court has simply referred provision of Section 319 Cr.P.C and proceeded to hold that the said provisions empowers it to summon additional accused. The statement of the complainant recorded in the Court is at variance as far as

involvement of the petitioners is concerned. However, injuries are attributed to Joginder Singh as mentioned in the first version. Similarly the statement of Jatinder Pal Singh (PW-2/injured) also differs materially to the statement given in Section 161 Cr.P.C as far as involvement of these three petitioners in the crime is concerned.

The revisional Court instead of exercising jurisdiction vested in it, has proceeded to uphold the order passed by the trial Court with the observation that there is substantive evidence against the petitioners who had taken active part in the commission of offence.

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."*

In view of the above, it is apparent that the trial Court has exceeded its jurisdiction in allowing the application under Section 319 Cr.P.C without recording the required satisfaction as laid down by the Hon'ble Supreme Court and the revisional Court has also failed to exercise the jurisdiction vested in it.

Resultantly, the impugned orders dated 05.11.2015 and 13.03.2015 are set aside and the application filed by the complainant under Section 319 Cr.P.C is dismissed.

The petition is allowed.

(MANOJ BAJAJ)
JUDGE

April 12, 2019
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No