

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr.No.206

CRM-M-7465-2017
Reserved on:10.01.2019
Pronounced on:21.01.2019

Harjit Singh

....petitioner

Versus

State of Punjab and another

.....respondents

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Parveen Kumar Garg, Advocate for the petitioner

Mr.J.P.Ratra, DAG Punjab

ARVIND SINGH SANGWAN, J. :

Prayer in this petition is for quashing of the order dated 22.07.2016 passed by the Judicial Magistrate First Class, Sunam, vide which the petitioner has been summoned under Section 319 of the Code of Criminal Procedure (for short, "Cr.P.C.), to face the trial in FIR No.160 dated 30.12.2013, under Sections 279/304-A/337 IPC as well as the order dated 03.12.2016, vide which revision filed by the petitioner was also dismissed.

Brief facts of the case are that the aforesaid FIR was registered on 25.12.2013, as one Jiwan Singh was admitted in Amar Hospital, Patiala, on account of sustaining injuries in a road side accident. ASI Rajinder Singh, reached the hospital and inquired from the doctor about the fitness of the injured to make the statement. Accordingly, a DDR No.20 dated 25.02.2013 was registered. On 26.12.2013, Jarnail Singh gave a statement

to the investigating officer that he along with one Rajesh Singh @ Raja were going on a motorcycle bearing registration No.PB-13-AE-9101 to take his son Harjit Singh, who was coming on leave from his Army duty. He was about half kilometre away from village Chhajli, when another vehicle was seen coming from the side of the village and the said motorcycle struck against 2/3 boys going on foot. The injured boy was named Jiwan Singh. Thereafter, on 29.12.2013, again the investigating officer obtained the opinion of doctor to which the doctor opined that the injured was unfit to make the statement. On 30.12.2013, one Jarnail Singh, father of the injured made a statement that on 24.12.2013, Simranjit Singh, son of his neighbour informed him that his son Jiwan Singh received injuries in an accident and he got him admitted in the hospital, from where his son was referred to Patiala and admitted in Amar Hospital, Patiala, and is unconscious since then. He further stated that the name of the rider of the offending motorcycle was Bagga Singh, who has caused the accident and father of Bagga Singh namely Karamjit Singh was pillion rider of the motorcycle. Later on, Jiwan Singh died on 02.01.2014 and the FIR, which was initially registered under Sections 279 and 337 IPC was converted under Section 304-A IPC.

After the police conducted the investigation and challan was presented against accused Karamjit Singh. The trial Court framed the charges against him under Sections 279/304-A and 337 IPC.

Thereafter, the prosecution examined Jarnail Singh as PW1 and Satpal Singh @ Satgur as PW2. After their examination-in-chief was recorded, the prosecution filed an application under Section 319 Cr.P.C. to

summon Bagga Singh as an additional accused that in fact he was driving the motorcycle at the time of the accident. The trial Court, vide order dated 22.07.2016 allowed the said application. Thereafter, the petitioner filed a revision before the Court of Sessions and the said revision petition was dismissed vide order dated 03.12.2016. The operative part of the said order reads as under:

“On the other hand, learned Additional Public Prosecutor argued that the impugned order dated 22.07.2016 passed by learned Judicial Magistrate Class-I, Sunam does not require any interference. It is based on the statement of complainant Jarnail Singh examined as PW1 and other eye witness Satpal @ Satgur, PW2. The statements of both the witnesses are consistent. Even when the statements of these witnesses were recorded by the police, they had named Bagga Singh son of Karamjit Singh responsible for causing the accident in which son of Jarnail Singh lost his life. The facts of the case and the material on record was rightly appreciated by the learned Magistrate and it is prayed that the revision preferred by the revisionist may kindly be declined.

I have considered the arguments advanced before me as well as the authorities which are relied upon by learned counsel for the revisionist. In the present case, the statement of Jarnail Singh complainant was recorded for the first time on 25.12.2013 regarding the accident which took place on 24.12.2013. In the said statement recorded before the police Jarnail Singh referred some unknown driver of motorcycle who caused the accident. Jarnail Singh had further stated that till he son regained consciousness he did not want to take any action. Thereafter, the statement of Jarnail Singh was again

recorded on 30.12.2013 where he clarified that he had come to know about the said accident was caused by motor cycle Discover bearing registration No.PB-13-AE-9101 driven by Bagga Singh son of Kaaramjit Singh, resident of Sangatiwala. I have also gone through the statement of Satgur @ Satpal recorded under Section 161 Cr.P.C. who is eye witness to the accident and who further claimed that he had given information to the family members of injured on mobile phone and admitted the injured in the hospital. Complainant Jarnail Singh named Bagga Singh son of Karamjit Singh as driver of the offending motorcycle. However, after conducting enquiry Bagga Singh was kept in column No.2 of the challan report and Karamjit Singh was named as an accused and challan was presented in the Court. After framing of charge against Karamjit Singh when the statement of Jarnail Singh, PW1 and Satpal @ Satgur PW2 were recorded in chief, they categorically stated that the accused facing trial Karamjit Singh had not caused the accident. In fact the accident was caused by Bagga Singh son of Karamjit Singh, resident of Sangatiwala. On that basis application under Section 319 Cr.P.C was filed by the prosecution to summon the accused which is allowed by passing impugned order dated 22.07.2016. From the perusal of statement of Jarnail Singh dated 30.12.2013, it came on record categorically that driver of the said offending motorcycle was namely Bagga Singh son of Karamjit Singh. Jarnail Singh as PW1 and Satgur @ Satpal PW2 consistently named Bagga Singh son of Karamjit Singh as accused in the present case who caused the accident. These two witnesses never changed their stand. It is not the case that Jarnail Singh complainant or Satgur changed their

stand at different stages. Therefore, considering the statements of aforesaid witnesses, the impugned order dated 22.07.2016 passed by learned trial Court to summon Bagga Singh as an accused does not require any interference and the order is accordingly upheld. The revisionist has further claimed that his name is Harjit Singh son of Karamjit Singh and he is never known as Bagga Singh. There is no disputed regarding the parentage and during the course of arguments learned counsel for the revisionist conceded that Karamjit Singh has got only one son i.e.the revisionist. Therefore, I do not find any ambiguity regarding the identity of revisionist. Moreover, this fact can be further clarified during the course of evidence to be led by the prosecution and the evidence led in defence.

With this observation, I do not find merits in the revision petition preferred by the revisionist and the same is accordingly dismissed.

However, my above observations are made for the disposal of present revision and it will not affect the merits of the case.

Parties are directed to appear before the learned trial Court on 12.12.2016. Trial Court file be returned back with the copy of this judgement. Revision petition file be consigned to the record room. “

Learned counsel for the petitioner has argued that the impugned orders passed by the trial Court as well as by the revisional Court are illegal and liable to be set aside. It is argued that the statements of PW1-Jarnail Singh and PW2-Satpal Singh @ Satgur were recorded by the police. During the investigation, it was found that the accident was not caused by the petitioner, as the train of the petitioner reached railway station Dhuri at

6.53 PM, whereas the accident occurred at 7.30 pm at Chhajli and in this short span of time, the petitioner cannot reach there. Therefore, the petitioner was kept in column No.2 of the challan. It is further submitted that as per the judgment of the Hon'ble Supreme Court in ***Hardip Singh vs. State of Punjab, 2014(1) RCR (Criminal) 623***, it is held that the power under Section 319 Cr.P.C is discretionary and an extra ordinary power, it should be exercised sparingly only in those circumstances where the circumstances of the case so warrant and the Court should record its satisfaction that the evidence led before the Court is more than prima facie as that is required for framing of charge.

In reply, learned State counsel has however submitted that the trial Court has rightly exercised its jurisdiction under Section 319 Cr.P.C holding that the police did not exonerate Bagga Singh and has kept him in column No.2 and in the statement of PW1 and PW2 is recorded in part, i.e.examination-in-chief, they have specifically stated that Karamjit Singh who is facing the trial was not driving the motorcycle and it was Bagga Singh, who was driving the motorcycle. It is also held by the trial Court that the police only on the basis of an inquiry conducted by one official has held that Bagga Singh was not driver of the offending vehicle and therefore, he has been rightly summoned under Section 319 Cr.P.C.

Learned State counsel further submits that even the revisional Court has applied its judicial mind and has found that the trial Court has rightly summoned the petitioner.

After hearing learned counsel for the parties, considering the scope of petition filed under Section 482 Cr.P.C., challenging the order

passed by the trial Court exercising its jurisdiction, while allowing the application under Section 319 Cr.P.C.vide order dated 22.07.2016, as well as the revisional jurisdiction exercised by the Court of Sessions, upholding the said order, I find no merit in the present petition. Both the Courts have concurrently held that from the statements of PW1 and PW2, it has come that prima facie it was the petitioner who was driving the motorcycle and not Karamjit Singh. Moreso, in the police inquiry, the petitioner was never exonerated and he was kept in column No.2.

In view of the above, finding no merit in the petition, the same is hereby dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

21.01.2019
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Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No