

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR No.3362 of 2018
Date of Decision:29.04.2019

Jimmy @ Maninder and others

...Petitioners

Versus

State of Punjab and another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Keshav Pratap Singh, Advocate for the petitioners

Mr.Bhupinder Beniwal, AAG, Punjab.

Mr.APS Deol, Sr. Advocate with
Mr.H.S.Deol, Advocate for the complainant.

ANIL KSHETARPAL, J.

Challenge in the revision petition is to the order dated 18.08.2018 passed by learned Additional Sessions Judge, SAS Nagar (Mohali), summoning the petitioners as additional accused who are six in numbers under Section 319 of the Code of Criminal Procedure.

Some facts are required to be noticed. First Information Report was filed on 21.04.2016, alleging that the accused party namely Billa, Raman, Mohinder Singh Megh Raj, Rajpal, Pintu Mahaveer, Rinku and Tinku along with 6-7 other unknown youngsters attacked the complainant party with deadly weapons. It may be noted that there is a cross-case registered by the other party. On completion of the investigation, challan was presented in which the investigating agency found that involvement of Inderjit Singh @ Tinku is not prima facie proved as he was attending to his duty in Factory Maha Lakshmi at the time of incident. Police further recorded that no name regarding any unidentified accused has come to the

notice during the course of investigation. Statement of DW-1 Munish Kumar, author of the FIR, was recorded by the court on 12.7.2018 and 17.7.2018. In the aforesaid statement, he named five new accused namely Jimmy, Bablu, Kabaj Singh, Aman and Sher Singh apart from once again implicating Inderjit Singh @ Tinku (the petitioners herein). Some part of the examination-in-chief was recorded on 12.7.2018, whereas remaining examination in chief was recorded on 17.7.2018. The cross-examination was deferred as learned public prosecutor for the State moved the application under Section 319 Cr.P.C.

Learned Additional Sessions Judge, after reproducing the statement of Munish Kumar (DW-1)-complainant while summoning the petitioners under Section 319 Cr.P.C., had recorded as under:-

“Thus, specific role is attributed to persons sought to be summoned, weapons carried by them at the time of crime and the injuries inflicted by the said persons on the person of complainant party. The evidence indicate a reasonable prospect that the persons, who are to be summoned, would be convicted. Consequently, the application under reference is allowed. Persons namely Inderjit Singh @ Tinku son of Mahavir Singh, Jimmy son of Tota Ram, Bablu son of Tota Ram, Kabaj son of Surat Singh, Aman son of late Sher Jang and Sher Singh son of Inder Singh, all residents of v. Samgoli, Teshil Dera Bassi, District SAS Nagar (Mohali), as accused to face trial in this case for the offences punishable u/s 148, 323, 325 read with Section 149 IPC and 447 read with Section 511 IPC, for 05.09.2018.”

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the documents placed on the file.

Learned counsel appearing for the petitioners has submitted

that while summoning the additional accused under Section 319 Cr.P.C., the court was required to examine whether more than prima facie case for summoning the accused is made out or not. He has submitted that the court recorded that there is a reasonable prospect that the persons who are to be summoned would be convicted is without any reasonable basis. He has further submitted that while passing the order the Court was required to apply the well settled principle as laid down in the judgment passed by the Constitution Bench of Hon'ble the Supreme Court in the case of **Hardeep Singh Vs. State of Punjab and another, (2014) 3 SCC 92**. He has relied upon following paragraphs of the judgment, while reiterating the arguments noticed above, which are extracted as under:-

“Power under Section 319 Cr.P.C. is a discretionary and an extra- ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is 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 the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if ‘it appears from the evidence that any

person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

On the other hand, learned counsel for the State has submitted that the order passed by the learned Additional Sessions Judge is perfectly valid and the evidence of Munish Kumar has rightly been relied upon by the Court, while passing the impugned order.

It may be noted here that Section 319 Cr.P.C. provides and enables the Court to proceed against other persons appearing to be guilty of offence for which the trial is going on. The words used in Section 319 Cr.P.C. are "it appears from the evidence that any person not being the accused has committed any offence". Thereafter, the important words are "which he appears to have committed". Hon'ble the Supreme Court has recently considered this matter in detail in the case of **Hardeep Singh** (supra). It has been held that power under Section 319 Cr.P.C. is extraordinary discretionary power and it is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It has further been laid down that it is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some others persons may also be guilty of committing that offence. Only where strong and cogent evidence is available against a person from the evidence, such power should be exercised and not in a casual and cavalier manner.

Now let us test this case on the touch stone of law as interpreted by Hon'ble the Supreme Court.

As noticed above, in the FIR, apart from Inderjit @ Tinku i.e.

petitioner No.2 remaining five petitioners were not named. Learned counsel for the complainant has failed to draw attention of the Court to evidence collected by the prosecution during the course of investigation where names of five petitioners namely petitioners No.1, 3 to 6 were ever named by the complainant or their witnesses. Challan in the present case was presented on 16.08.2016. In the challan as noticed above, the investigating agency specifically recorded that no evidence has come with regard to person who were not named in the FIR. Still further, complainant has failed to produce any evidence or even prima facie show that during the period when investigation was being carried out or even thereafter till the statement was recorded in the Court on 12.7.2018 and 17.7.2018 the complainant had ever made any representation to the investigating agency or to any other authority superior thereto complaining that the investigating agency has not noticed the names of these petitioners namely 1 and 3 to 6. When Munish Kumar, complainant author of the FIR, appeared while trying to implicate these five petitioners namely 1, 3 to 6 has only stated that his evidence was not recorded by the police correctly. Although, he admitted that his statement Ex. P1 as recorded by the police bears his signatures.

On reading of the application under Section 319 Cr.P.C. the only fact asserted is that in the statement of Munish Kumar specific role has been attributed to petitioners No. 1, 3 to 6 but they have not been challaned. Even in the application, there is no assertion that Munish Kumar had taken any step during investigation or even thereafter or had even addressed any representation to the higher authorities complaining against the investigating officer who has omitted to record the names of petitioner No.1, 3 to 6. Thus, the Court is left with solitary statement of Munish

Kumar who has appeared in the Court on behalf of prosecution after a period of more than two years.

Question which arises is that as to whether the trial Court was justified in summoning the petitioners No.1, 3 to 6 solely on the oral evidence of Munish Kumar which is not complete as the cross-examination was deferred?

In the considered view of this Court, learned Additional Sessions Judge did not appreciate the facts which had come on record and jumped at a conclusion simply and simply only on the basis of statement of Munish Kumar, who had for the first time disclosed the names of petitioners No.1, 3 to 6 after a period of more than two years. This Court is of the considered view that such evidence of Munish Kumar is not sufficient to even prima facie record that these petitioners may also be guilty of committing that offence. Learned Additional Sessions Judge committed an error as such statement was not sufficient to hold that strong and cogent evidence is available against a person from the evidence led before the court that such powers should be exercised.

It may be noted that it is always open to the prosecution and the court to summon other persons appearing to be guilty of an offence. However, the words appears to have committed have been explained and very ably interpreted by Hon'ble the Supreme Court in the case of **Hardeep Singh (supra)**.

In view thereof, the order under challenge is set aside to the extent of qua petitioners No.1, 3 to 6. However, with regard to petitioner No.2 Inderjit Singh @ Tinku his name, figures in the First Information Report as well as statement of Munish Kumar when he appeared in

evidence. No doubt, the police found his plea of alibi to be believable, however, it would be more appropriate if the order qua him is upheld. The plea of alibi taken by Inderjit Singh @ Tinku, if any, would be required to be proved before the Court.

Accordingly, order qua petitioner No.2-Inderjit Singh @ Tinku is upheld. It may be noted that at any subsequent stage, if the Court finds that some strong and cogent evidence has come against petitioners No.1, 3 to 6, the court would be at liberty to pass fresh order.

In view of the above, CRR No. 3362 of 2018 is partly accepted.

29.04.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No