

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

Decided on: 23.09.2019

1. CRR No.997 of 2018 (O&M)

Narinder Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

2. CRR No.2394 of 2018 (O&M)

Sandeep Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Veneet Sharma, Advocate
for the petitioners.

Mr. Jagmohan Ghumman, DAG, Punjab.

Mr. M.K. Dogra, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J.

CRM No.25144 of 2018 in CRR No.2394 of 2018

Prayer in this application is for condonation of delay of 39
days in filing the revision petition.

Heard.

For the reasons stated in the application, the same is
allowed and the delay of 39 days in filing the revision petition stands
condoned.

CRR Nos.997 and 2394 of 2018 (O&M)

Prayer in these revision petitions is for setting-aside the order dated 22.12.2017 passed by the Sessions Judge, Amritsar vide which the petitioner – Narinder Singh (in CRR No.997 of 2018) and the petitioner – Sandeep Singh (in CRR No.2394 of 2018) were summoned under Section 319 of the Code of Criminal Procedure (in short 'Cr.P.C') as an additional accused.

Brief facts of the case are that FIR No.234 dated 01.12.2016 under Sections 302, 148, 149, 472, 411, 120-B of the Indian Penal Code (in short 'IPC') and 27/54/59 of the Arms Act, at Police Station Sadar Amritsar, District Amritsar was registered on the statement of Swaranjit Kaur, wife of the Jagbir Singh with the allegations that she is a Lecturer in Government College and her husband Jagbir Singh was working as Assistant Engineer in Water Supply and Sewerage Board. On 30.11.2016, she along with her husband had gone to the neighbourhood for a walk and at about 06:30 PM, she asked her husband to bring some articles from a shop and her husband was 20 yards ahead of her, when some persons surrounded him and after an altercation fired gun shot at him and ran away from the spot. On asking, her husband informed that Gurbir, Parminder, Narinder (the petitioner herein) and Sandeep (the petitioner herein) have fired on him and thereafter, he became unconscious and the complainant took her to hospital where he was declared brought dead.

Counsel for the petitioner has submitted that thereafter, the police conducted an enquiry and vide two enquiry reports dated 11.09.2017 and 14.09.2017, the Special Investigating Team on

verification of facts, found that the petitioners – Narinder Singh and Sandeep Singh have been named by the complainant on account of an enmity, therefore, they are found to be innocent.

Thereafter, the police submitted the challan under Section 173 Cr.P.C. against the accused Gurbir Singh son of Narinder Singh. The prosecution after recording some evidence, especially the statement of the complainant who appeared as PW8 and one Makhan Singh, who appeared as PW10 moved an application under Section 319 Cr.P.C. for summoning both the present petitioners as an additional accused.

The trial Court, thereafter, allowed the application vide impugned order dated 22.12.2017, by passing the following order:-

“5. Sandeep Singh and Narinder Singh were named in the FIR. Even complainant Swaranjit Kaur while appearing in the witness box as PW stated that on 30.11.2016 at about 6.00 p.m. she and her husband Jagbir Singh went for a walk outside the house. Then at about 6.30 p.m. her husband went to purchase cheese while she was standing at the turning point of the lane. When her husband was at a distance of about 20 yards from her, she heard noise and then she started moving in the direction in which her husband had gone and then she saw that accused Gurbir Singh, Sandeep Singh, Narinder Singh and Parminder Singh were present there alongwith some other unknown persons and accused Gurbir Singh and Sandeep Singh were having revolvers and they were shooting at her husband with their respective weapons and the shots hit on the front side of the body, back and head of her husband Jagbir Singh as a result of which he fell on the ground. That she reached close to her husband and inquired from him as to what happened on which he replied that Gurbir Singh, Sandeep Singh, Narinder Singh

and Parminder Singh alongwith some other persons firstly abused him and then fired shots at him. She further deposed that Makhan Singh and Harjans Kaur also witnessed the said occurrence. She identified accused Gurbir Singh in the court. She also deposed that accused were known to her even prior to the occurrence as they belong to the village of her husband.

6. The aforesaid Makhan Singh also appeared in the witness box as PW10 and he deposed that on 30.11.2016 at about 6.30 p.m., he was going to meet Jagbir Singh and on the way when he reached near transformer, he saw that some persons were standing there and in the meantime Jagbir Singh came from the side of colony and immediately 5/7 persons encircled him. That Narinder Singh and Parminder Singh who were also present there raised lalkara that Jagbir Singh be not spared and then Sandeep Singh and Gurbir Singh started firing shots from their pistol. PW10 further deposed that he himself took shelter behind the pole of the transformer and in the meantime Swaranjit Kaur also came there and Sandeep Singh alongwith two other unidentified persons ran away towards Majitha road on seeing Swaranjit Kaur, while Gurbir Singh also ran away towards the side of colony. PW10 further deposed that said accused were already known to him and he identified accused Gurbir Singh in the court.

*7. In **Hardeep Singh Versus State of Punjab 2014(1) RCR (Criminal) 623 (S.C.)**, it was held that the court has got power to summon a person not named in the FIR or a person though named in the FIR, but has not been charge sheeted or a person who has been discharged, as an additional accused.*

*8. In **Deepika Versus State of Haryana and others 2015 (4) RCR (Criminal) 66 (P&H)**, it was held that*

evidence for summoning a person as an additional accused should satisfy the test which should be more than prima-facie case.

9. In the case in hand, complainant Swaranjit Kaur and PW10 Makhan Singh clearly named Sandeep Singh and Narinder Singh as the assailants who accompanied Gurbir Singh at the time of occurrence. So, in this case more than prima-facie case is established against Sandeep Singh and Narinder Singh. This court is of the view that Sandeep Singh and Narinder Singh should be tried alongwith Gurbir Singh in this case.

10. Accordingly, this application moved by the prosecution under section 319 Cr.P.C. is allowed and Sandeep Singh and Narinder Singh are directed to be summoned as additional accused in this case.”

Counsel for the petitioners has argued that from the statement of PW8, it is apparent that she is, in fact, not an eye-witness and the prosecution is trying to prove her as an eye-witness. Counsel for the petitioners has referred to the FIR to submit that she was not present at the spot and since the deceased died instantly, he had no time to inform the complainant about the names of the accused persons.

Counsel for the petitioners has further submitted that there is an old enmity between the parties and therefore, the petitioner – Narinder Singh has been falsely implicated though his son Gurbir Singh is facing the trial. It is further submitted that the presence of PW10 – Makhan Singh is doubtful as he has not been named in the FIR by PW8 – Swaranjit Kaur, the complainant.

Counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court ***“Brijendra Singh and others vs State of***

Rajasthan”, 2017(3) RCR (Criminal) 374, to submit that the evidence of PW8 and PW10 is in verbatim is the same as the statement recorded under Section 161 Cr.P.C. and therefore, once the Special Investigating Team has found both the petitioners innocent, the trial Court should not have pass the impugned order.

In reply counsel for the State assisted by the Investigating Officer as well as counsel for respondent No.2 has, however, opposed the prayer. It is argued that it will be a matter of trial to appreciate the entire evidence and at this stage, the Court is required to find out whether more than *prima facie* evidence has come on record to summon the petitioners. It is further submitted that from the statement of PW8 and PW10, both the eye-witnesses, it is apparent that the petitioner Sandeep Singh along with Gurbir Singh were having revolvers and they fired multiple shot on the deceased, as a result of which, he died.

Counsel for the respondents has further argued that PW10 has especially stated that the petitioner Narinder Singh @ Bhulla raised the *lalkara* that Jagbir Singh be not spared and upon that Sandeep Singh and Gurbir Singh started firing from their pistols.

After hearing the counsel for the parties, I find no ground to interfere in the order passed by the trial Court as the trial Court has passed a well-reasoned order on the basis of the statement of the complainant – PW8-Swaranjit Kaur as well as eye-witness PW10 – Makhan Singh, who have specifically named Narinder Singh as the person, who raised lalkara and Sandeep Singh as a person, who along with co-accused Gurbir Singh opened fire on the deceased Jagbir Singh.

In view of what has been discussed hereinabove, finding

no merit, both these revision petitions fail and are accordingly dismissed.

Since the main revision petitions have been decided, the pending applications, if any, are also disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

23.09.2019
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No