

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

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CRR No.3128 of 2019

Date of decision : 25.11.2019

Anil

... Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL

Present : Mr.Naveen Thakur, Advocate
for the petitioner.

Anupinder Singh Grewal, J. (Oral)

The petitioner has challenged the order dated 11.10.2019 passed by the Additional Session Judge, Karnal, whereby application under Section 319 Cr.P.C. for summoning the private respondents, namely, Surinder son of Sham Singh and Sanju son of Dhuman, residents of village Muana, District Jind, as additional accused to face trial, was dismissed.

Learned counsel for the petitioner contends that the private respondents had been specifically named in the FIR by the complainant. He had also named them in his statement before the court and therefore, they should have been summoned to face trial as additional accused. He also contends that the private respondents have criminal antecedents and had therefore, participated in the occurrence. He has also relied upon the judgment of the Supreme Court in the case of “**Sugreev Kumar vs. State of Punjab and others**” Criminal Appeal No.509 of 2019 (Arising out of SLP (Crl.) No.9687 of 2018).

Heard.

It is apparent from the reading of the FIR which has been lodged by the petitioner that five persons had come to the spot and out of whom, Khabbar @ Ravinder had fired a gun shot which hit the deceased on his chest. The deceased later on succumbed to the injury. It is also alleged that the motive is attributed to Raj Kumar @ Michael who was earlier working in the wine shop of the deceased as salesman and had been removed from the shop and therefore, he had nursed a grudge against the deceased.

The prosecution after investigation had found the private respondents to be innocent and they were kept in column No.2. It is evident that no overt act had been attributed to the private respondents who were alleged to be only accompanying the other co accused. The three other accused including Khabbar @ Ravinder who is alleged to have fired the fatal shot and Raj Kumar @ Michael who is alleged to be nursing grudge against the deceased, have been challaned and are facing trial.

It has been held by the Supreme Court in the case of **“Hardeep Singh vs. State of Punjab 2014(3) SCC 92**, the power under Section 319 Cr.P.C. has to be used sparingly and only in those cases where the circumstances exist for doing so. 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.

The judgment of the Supreme Court in the case of Sugreev

Kumar vs. State of Punjab and others (supra) is distinguishable on facts from the instant case. In that case, several persons had come to the place of occurrence armed with various weapons including pistols and rifles which had led to the death of two persons and several others had been injured including the appellant therein who had received three bullet injuries. It was in those circumstances that the Supreme Court held that there was more than prima facie case to summon the respondents therein, as additional accused.

On the contrary in the instant case, there is only one firearm injury which has been caused to the deceased. This injury is attributed to co-accused Khabbar @ Ravinder. No overt act has been attributed to the private respondents. It is also not alleged that they were armed with any weapon.

Consequently, I do not find any manifest illegality in the impugned order dated 11.10.2019 dismissing the application preferred under Section 319 Cr.P.C. for summoning the private respondents as additional accused.

The petition stands dismissed.

[ANUPINDER SINGH GREWAL]
JUDGE

25.11.2019

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No