

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

CRM-M-29073-2017(O&M)

Date of decision:-31.1.2020

Godhu and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.R.A. Sheoran, Advocate
for the petitioners.

Mr.Kuldeep Sharma, DAG, Haryana.

H.S. MADAAN, J.

Briefly stated, facts of the case are that complainant Paramjit Kaur daughter of Amar Singh of Rai Sikh community, aged about 19 years, resident of Sipper had got her statement recorded with the police of Police Station Bawani Khera, wherein she stated that on 29.5.2012, she was working in her fields in the village having cotton crops and their water turn was scheduled to began at 9:18 a.m. and the water was to start from a distance of 3 killas from the place, where she was working; in the meanwhile a tractor carrying several persons besides persons riding three motorcycles came there; all of them were carrying jailies, lathies, binda (handles) of kassi; those persons were Balwan, Ram Mehar son of Chet Ram, Bala, Ramesh son of Ram Narain, residents of Sipper; other persons accompanying them were having muffled faces; Mangal son of Jugla and Pappu son of Hoshiyar

Singh caught hold of the complainant and threw her on the ground; they started giving lathi blows to her besides giving slaps; the complainant raised an alarm; the father of the complainant, who was irrigating the fields came there; he was also given beatings by those assailants; after some time Sonu son of Harbans, a cousin brother of the complainant came there; on his arrival all those persons ran away; father and cousin brother of the complainant took her to CHC, Tosham for treatment; from that medical institute information was given to the police, then ASI Nafe Singh had left for CHC, Toshan but due to some reasons, he could not reach there and record the statement of complainant.

On 29.5.2012, ASI Nafe Singh collected ruqa and MLR of injured/complainant and reached CHC, Tosham, where he recorded statement of complainant Paramjeet Kaur. ASI Nafe Singh attested her signatures. MLR of injured/complainant disclosed two injuries on her person, both with blunt weapons. X-ray examination had been advised. The Investigating Officer observed that no serious offence was made out and after x-ray reports, the proceedings will be initiated and statement would be recorded in the Roznamcha of the police station. Subsequently, x-ray report of injured/complainant Paramjit Kaur was received, which disclosed a fracture of clavicle, therefore, being of the view that offences under Sections 147, 149, 323 and 325 IPC were disclosed, formal FIR No.95 dated 12.6.2012 was registered with Police Station Bawani Khera. The investigation in the case started, which revealed that only Balwan and Ram Mehar were involved in the incident. Whereas involvement of remaining persons named by complainant Paramjeet Kaur was not found to be there, as such they

were not challaned. During the course of trial against Balwan and Ram Mehar when statement of complainant Paramjeet Kaur was recorded as PW1, the prosecution moved an application under Section 319 Cr.P.C. for summoning of petitioners as additional accused. That application was dismissed by the trial Magistrate vide order dated 2.2.2015 with the following observations:

7. *Perusal of the testimony of PW1 would reveal that she has made material improvements in her testimony and alleged that the accused persons came to insult her. She has alleged that 7/8 persons caused injuries to her, but the perusal of the MLR would reveal that she has sustained only two injuries. One specific injury on the collar bone was alleged by her to be caused by accused Ram Mehar in her cross-examination and accused Balwan caught hold of her by her neck, which was not stated by her in the FIR. She has named one Bala wife of Ram Mehar in the FIR, but Bala was not named by her in her testimony before the Court. In the FIR, she has said that Mangal son of Jugla and Pappu son of Hoshiara Singh had caught hold of her and thrown her on the ground, but in her testimony before the Court no such allegation was levelled against Mangal son of Jugla and Pappu son of Hoshiara Singh. There is no material on file to support version of complainant except the two statements of complainant herself, one is FIR and another is her testimony before the Court to support her version. In fact, the two statements made by her have*

material contradictions. In such circumstances, exercise of power under Section 319 Cr.P.C. is not required in this case.

8. *Furthermore, the evidence on file is not sufficient to show reasonable prospects of the conviction of the aforesaid persons in case they are summoned to face trial.*

9. *In view of the aforesaid circumstances, no ground for exercise of power under Section 319 Cr.P.C. is made out. The application under Section 319 Cr.P.C. filed by complainant/applicant Paramjeet daughter of Amar Singh through learned APP for the State for summoning of Godhu son of Chet Ram, Krishan son of Rampat @ Ramphal, Ramesh son of Ram Narain, Mangal son of Jugla and Pappu son of Hoshiara Singh additional accused stands dismissed.*

The complainant felt aggrieved by the said order and challenged the same before the Court of Sessions by way of filing a revision petition, which was allowed by Additional Sessions Judge, Bhiwani inasmuch as the impugned order was set aside and trial Court was directed to decide the application afresh after hearing the revisionist/complainant for the reason that complainant had named all those persons in her evidence except name of Krishan and Bala and she had named the other accused for summoning of whom an application under Section 319 Cr.P.C. had been filed.

Thereafter, the trial Magistrate vide order dated 30.11.2015 accepted the application and directed that accused Godhu, Krishan,

Ramesh, Mangal and Pappu be summoned as additional accused along with accused Balwan and Ram Mehar already facing trial.

Then the petitioners had filed a revision petition before the Court of Sessions, which was allowed vide order dated 10.5.2016 and the case was remanded to the trial Court to reconsider the material on record and pass a reasoned order. Then learned Public Prosecutor and complainant did not press the application under Section 319 Cr.P.C. and requested that it be kept pending and after examination of all the witnesses, the request was made to decide the said application. Accordingly, the trial Court vide order dated 15.2.2017 summoned the petitioners as additional accused.

Then the petitioners filed a revision petition before learned Additional Sessions Judge, Bhiwani. However, it was dismissed. As such the petitioners have approached this Court by way of filing petition under Section 482 Cr.P.C., notice of which was issued to the respondents.

Respondent No.1 – State appeared through counsel, whereas respondent No.2 not appeared despite service.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioners has contended that petitioner Godhu and Krishan are not named in the FIR and no role has been assigned to them; that there are only two injuries found on the person of complainant, one of which is simple and other a fracture attributed to Ram Mehar and Balwan; that the police after investigation had found the petitioners to be innocent; that the complainant had stated

that accused had caused injuries to her father but he was not medically examined, thus a false story has been introduced. He further contended that petitioner Krishan is serving in Army and is under training. The petitioners were wrongly summoned by the trial Court and that wrong be undone by way of acceptance of the present revision petition.

Whereas learned State counsel has vehemently defended the impugned order stating that no interference therewith is called for.

Before touching the merits of the case, the scope of Section 482 Cr.P.C. is to be seen.

Section 482 Cr.P.C. deals with inherent powers of the High Court providing that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Now it is to be seen as to whether the present case falls within four corners of this provision or not. The answer is obviously in negative. Though in the FIR the complainant had named Balwan, Ram Mehar, Bala, Ramesh only but she had further stated that several other persons with muffled faces were also there. She has stated that Mangal son of Jugla and Pappu son of Hoshiyar Singh accompanied by other persons with muffled faces caught hold of her, threw her on the ground and starting giving lathi blows and slaps. It is a matter of common knowledge that FIR is often lodged in hurry and the informant may not be in a position to give the minute details of the incident due to nervousness or any other reason. The complainant comes out to be a

teen aged girl, who is not much educated belonging to weaker-section of the society. If she had not given a thorough details of the incident that does not mean that the culprits can get any advantage by default. The FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit and criminal, who had committed the crime. Merely for the reason that accused is not named in the FIR does not result in causing any dent in the prosecution story. The detailed manner of the incident and the culprits involved therein as well as role played by them is unfolded as a result of investigation. Sometime the investigating agency may give a clean chit to a person named as accused by the complainant but that is not the final word on the issue.

Section 319 deals with power of the Court to proceed against other persons appearing to be guilty of offence. It provides that where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed.

Here in the instant case though initially when during the trial after making statement of Paramjeet Kaur – complainant, the prosecution had moved an application under Section 319 Cr.P.C. but the same had been dismissed. On a revision petition having been filed by the complainant, learned Additional Sessions Judge, Bhiwani had set

aside that order directing the trial Court to decide the application afresh. Then the trial Court had accepted the application. However, that order was challenged by the petitioners by way of filing revision petition, which had been accepted. Thereafter, the application was not pressed and it was only when the prosecution had examined four PWs, then the said application was pressed. The trial Court considering the facts and circumstances of the case including the evidence available on record after discussing the case law including landmark judgment on the subject ***Hardeep Singh Versus State of Punjab 2014(3) SCC Page 92*** observed as under:-

“11. Analysis of the above judgments indicates that the provision contained in Section 319 Cr.P.C. should be sparingly used. There is no such bar on summoning a person who after naming in FIR has been left by the police after completion of investigation. However, summoning such person requires evidence on record of such a quality that it inspires the confidence of the Court regarding his involvement in the commission of the offence and subsequently his conviction in the case. However, after the judgment of the Constitution Bench of the Supreme Court in Hardeep Singh case (supra) the satisfaction requires for summoning additional accused is that of satisfaction required for the framing of charge. Accordingly, in the present case, it has to be examined whether evidence available on record is sufficient to frame charges against additional accused or not. However, against the Supreme

Court in **Bhima Bhai Bhokharia's** case (*supra*) held that “That test that has to be applied is one which is more than *prima facie* case as exercised at the time of framing of charge”.

12. In the present case as well, learned counsel for the complainant has named the accused persons in the FIR and when she appeared before the Court as PW1, she has categorically stated that persons namely, Godhu, Krishan, Ramesh, Mangal, Pappu, Balwan and Ram Mehar came alongwith other persons and started beating her. When her father tried to rescue her, he was also beaten by them. Thereafter, her cousin Sonu came and the accused persons left the spot after threatening him with dire consequences. She has levelled specific allegations against the accused persons sought to be summoned and they were identified by her at the spot, which is clear from the perusal of her statement Ex.PW1/A and the same has also been reiterated by the Court in her testimony before the Court.

13. In view of the aforesaid circumstances, the application under Section 319 Cr.P.C. filed by complainant/applicant through learned APP for the State is allowed and accused Godhu, Krishan, Ramesh, Mangal and Pappu are ordered to be summoned to face trial along with accused Balwan and Ram Mehar.

That order was challenged by way of filing a revision petition but the revisional Court did not find anything wrong with the

order and upheld the same. Therefore, the petitioners have approached this Court.

Learned counsel for the petitioners has referred to judgments *Nirmala Versus State of Haryana and others, 2016(5) RCR(Criminal) 3*, *Hardev Singh Versus State of Punjab, (2016) 4 RCR(Criminal) 1* and *Babubhai Bhimabhai Bokhiria and Anothers Versus State of Gujarat and others, 2014(2) RCR(Criminal) 915* in support of his contention that the impugned orders are liable to be set aside.

However, I find that these judgments do not come to the rescue of the petitioners. The trial Court found merit in the application and therefore allowed it. The order is quite detailed and well reasoned. Learned Additional Sessions Judge, Bhiwani has rightly dismissed the revision petition upholding the order passed by the trial Court.

I do not find any illegality or infirmity in such judgment, which might have called for interference by this Court while exercising jurisdiction under Section 482 Cr.P.C. It cannot be said that the orders are perverse or passed against settled legal position or for that matter those orders have resulted in miscarriage of justice.

Therefore, the petition stands dismissed.

31.1.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No