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(3 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(Through Video Conferencing)

1. CRR No.28 of 2018 (O&M)
Date of Decision: 28.08.2020

Manjeet Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

2. CRR No.3238 of 2018 (O&M)

Satkar Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

3. CRM-M No.55631 of 2018(O&M)

Palwinder Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. P.S. Ahluwalia, Advocate and
Mr. H.S. Randhawa, Advocate,
for the petitioner in CRR-28-2018 and
CRM-M-55631-2018.

Mr. Parveen Sharma, Advocate,
for the petitioner in CRR-3238-2018.

Ms. Tanushree Gupta, Deputy Advocate General, Haryana.

Mr. A.D.S. Sukhija, Advocate,
for respondent No.2 in CR-3238-2018 and
CRM-M-55631-2018.

Mr. Sant Pal Singh Sidhu, Advocate,
for respondent Nos.4 and 5 in CRR-28-2018.

NIRMALJIT KAUR, J.

All the above mentioned revision petitions shall stand

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decided by this common order arising from the same FIR No.477 dated 27.07.2016 under Sections 148, 302, 307, 341 read with Section 149 IPC and 27/54/59 of Arms Act, registered at Police Station Assandh as well as cross case registered under DDR dated 29.07.2016.

CRR-28-2018 is directed against the order dated 05.09.2017, by virtue of which the learned Additional Sessions Judge (for short, “the trial Court”) has dismissed the application under Section 319 of Cr.P.C. moved by the petitioner/victim for summoning of respondent Nos.2 to 5 as additional accused in case FIR No.477 dated 27.07.2016, under Sections 302, 307, 341, 148 and 149 of IPC, registered at Police Station Assandh.

The brief facts relevant for the instant petition are that FIR No.477 was registered on the basis of the statement of complainant Rann Singh, regarding the death of his son Amarjit Singh and injuries having been suffered by the present petitioner Manjeet Singh.

As per statement of Ran Singh, his son Amarjit Singh and his nephew Manjeet Singh were attacked by Sartaj Singh, Tejpal Singh and Sukhpal Singh sons of Gurdev Singh, Parab Sharan Singh and Preet Samrat Singh sons of Mohan Sarup while they were on their way back home after purchasing the pesticides meant for paddy in their car. They parked their Mahendera XUV 500 belonging to Sartaj Singh and blocked the road. They were armed with weapons and when his son Amarjit Singh followed by Manjeet Singh stepped out from his car to get the road cleaned, Sartaj Singh fired four shots from his licenced revolver, which hit the left side of the chest, stomach and elbow of Amarjit Singh. Sartaj Singh fired

indiscriminately from his licenced revolver, which also hit the nephew Manjeet Singh on the chest near the right shoulder. Amarjit Singh died on spot and Manjeet Singh was admitted in the hospital.

A cross case was also registered at the behest of Sartaj Singh, the accused in the FIR on 28.07.2016 which was recorded against the complainant side in the FIR No.477 dated 27.07.2016. In the statement made by Sartaj Singh, it was alleged that besides Manjeet Singh, Narvair Singh and other persons namely Palwinder Singh son of Ran Singh, Satkar Singh son of Rajwant Singh, Rajwant Singh son of Gurcharan Singh and Sukhdeep Singh son of Satnam Singh had inflicted injuries on his person. It was alleged that while he was going in his car Mahendera XUV-500 for personal work and stopped his car on the left side to answer the phone call, Manjeet Singh son of Mahinder Singh, who was coming in his car from Assandh side and a lady was sitting by his side, who may be his wife, stopped his car next to him and after rolling down his window threatened him for having ploughed his barley crop in his capacity as the Sarpanch and while going back home after finishing his work, he found that a car was parked diagonally on the road. The same car was parked in which Manjeet Singh was traveling and when he took out his head to look for the driver, Palwinder Singh son of Ran Singh, Satkar Singh son of Rajwant Singh armed with lathies and were hiding on the right side of the road came and attacked him and gave lathi blows on the head. Thereafter, 10/12 persons came running towards the car from both sides of the road. He went on to state that:

“Manjeet Singh son of Mahinder Singh, Amarjit Singh son of Ran Singh, Rajwant Singh son of Gurcharan Singh, Narvair Singh son of Tarlok Singh, Sukhdev Singh son of Satnam Singh, residents of Bandrala, he recognized were holding lathies and gandsis in their hands. Rajwant Singh came running towards my side and switched off the engine of the car and also opened the door lock of driver side of the car and also opened the door lock of driver side or the car. Manjeet Singh opened the door from outside. Manjeet Singh and Rajwant Singh both dragged me out of the car and Rajwant Singh raised a Lalkara that “today there is an opportunity and kill him.” On saying this, Amarjeet Singh, who was armed with Gandasi gave a blow on my head and Manjeet Singh, who was armed with Gandasi gave a blow on my left ear. Then Rajwant Singh who was armed with Gandasi gave blow from its front side. Thereafter, all these persons gave number of blows upon me and I started feeling unconscious and I fell on the ground on my kneewise. I thought that they will kill me today and I was seeing my death in front of my eyes. Then I took my revolver from the holster tied around my waist and fired with the same and I do not know to whom and where the shots hit. Those persons started running away upon my firing and while running away, some persons gave blows on my right shoulder and due to which my revolver fell down and those assailants can away and I also in order to save myself came back towards Adarsh School. I entered the Dera of Chhinna situated near the Adarsh School, where Bhupinder Singh and his father were present, whom I informed that some persons wanted to kill me and

kindly take me to Police Station. Thereafter, Bhupinder Singh @ Pinda took me to Assandh on his motor cycle and after some time I became unconscious, where the doctor gave me first aid and on seeing the seriousness of injuries referred me to General Hospital, Karnal. In the meantime my family members also reached Hospital, Assandh, took me to General Hospital Karnal in the car and after considering the number of injuries, the doctor referred to PGI, Chandigarh.”

The matter was investigated and after investigation, challan in the FIR was filed only against Sartaj Singh. All other accused were exonerated and were kept in column No.2. In cross case, one of the accused died and challan was filed only against two persons, whereas, four of them namely Palwinder Singh, Rajwant Singh, Sukhdeep Singh and Satkar Singh, were kept in column No.2.

Both sides being aggrieved, filed their respective application under Section 319 Cr.P.C. An application under Section 319 Cr.P.C. was filed by injured witness Manjeet Singh in the FIR No.477 for summoning Sukhpal Singh and Tejpal Singh sons of Gurdev Singh and Parab Sharan and Preet Samrat sons of Mohan Sarup. Learned Additional Sessions Judge, Karnal dismissed the application filed by Manjeet Singh for summoning of the accused Sukhpal Singh and others, vide order dated 05.09.2017. Whereas, the application under Section 319 Cr.P.C. filed by Sartaj Singh in a cross case for summoning Palwinder Singh, Satkar Singh, Rajwant Singh and Sukhdeep Singh, was allowed, vide order dated 21.04.2018.

Hence, the above mentioned revision petitions are preferred

against the impugned orders.

Mr. P.S. Ahluwalia, Advocate, learned counsel for the petitioner Manjeet Singh while praying for setting aside the impugned order in the respective revision petition and with a further prayer to allow the application under Section 319 Cr.P.C. filed by Manjeet Singh submitted that a brutal attack had been launched by as many as five persons causing fire arm injuries, which resulted in the death of Amarjeet Singh and injuries to Manjeet Singh. The medical report of injured Manjeet Singh would reveal that he has received a gun shot injury which entered from the chest and exited from the back of right arm. Whereas, the application under Section 319 Cr.P.C. for summoning accused in offence under Section 302 IPC has been dismissed and application under Section 319 Cr.P.C. in a cross case with only injury under Section 326 IPC is allowed on the ground that no suggestion has been made by the defence counsel during the cross examination that the other co-accused sought to be summoned under Section 319 Cr.P.C. were not involved in the incident, whereas, the same was not possible as the accused were not summoned at that stage and defence counsel was accordingly not present.

Further, while dismissing the application under Section 319 Cr.P.C. filed by Manjeet Singh, the trial Court observed that the investigation had been conducted by four DSPs and all four DSPs found the co-accused Sukhpal Singh and others in the cross case under Section 326 IPC innocent, whereas, no such DSP has been named as a witness by the prosecution, which was also evident from the order committing the case to

Sessions. Moreover, in an application moved by the petitioner seeking the investigation report of the DSP Assandh and DSP Panipat, he was informed that no such documents or enquiry report were available on the file. Further, another reason for dismissing the said application is that the complainant Ran Singh had not been examined by the prosecution, whereas, the Court over looked the fact that Manjeet Singh was not only an eye witness but was also an injured witness, who received gun shot injury on his chest and had been examined and statement of such a witness has been ignored by the trial Court. Further, five persons were named in the FIR, the name of said five persons was also mentioned in the statement of Manjeet Singh, therefore, it cannot be said that there is no prima facie case just because there is discrepancy in the role of Lalkara. There was a delay in registration of the cross case, whereas, the FIR was registered within six hours. Still, the Court did not find a prima facie case to summon the co-accused in the FIR under Sections 302, 307 of IPC. On the other hand, in offence under Section 326 IPC, as many as four persons are ordered to face trial.

While arguing the revision petition against the order dated 21.04.2018 passed by the trial Court, vide which, Palwinder Singh and others are summoned to face the trial in the cross case under Section 326 IPC, Mr. P.S. Ahluwalia, learned counsel for the petitioner submitted that the trial Court while summoning Palwinder Singh and others observed that two Deputy Superintendent of Police had verified the innocence of all four accused and the opinion of both DSPs was different to each other, which is factually incorrect as was evident from the report of second DSP, placed on

record as Annexure P-4. Secondly, the impugned orders were disturbing and leaves much to be desired as learned trial Court while allowing the application under Section 319 Cr.P.C. moved by Sartaj Singh in the cross case, has given a clean chit even to the accused Sartaj Singh, against whom challan has been filed under Section 302 IPC, whereas, the trial has yet to commence. Further, even the medical report of Sartaj Singh was obtained and cannot be relied upon as Sartaj Singh knowingly and with malafide intention shifted himself from government hospital to a private hospital. He left from Government Hospital, Sector 32, Chandigarh and got himself admitted in Mukat Hospital for obvious reasons.

Mr. Parveen Sharma, learned counsel for the petitioner in CRR-3238-2018 adopted the arguments raised by Mr. P.S. Ahluwalia, Advocate, learned counsel for the petitioner in CRR-28-2018.

Mr. A.D.S. Sukhija, learned counsel for the respondents while defending the impugned orders passed by the trial Court submitted that the very application under Section 319 Cr.P.C. at the behest of the private complainant was not maintainable. Reliance was also placed on the judgment rendered by Hon'ble the Apex Court in the case of ***Shiv Kumar Versus Hukam Chand and another, (1999) 7 SCC 467.***

While meeting the argument that the trial Court has wrongly relied on the enquiry of four DSPs submitted that the same cannot be sustained as the petitioner Manjeet Singh has himself relied on two reports of DSP to contend that they had been found innocent. Hence, the investigation being same, the existence of reports cannot be doubted.

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Further, the petitioner had moved an application bearing CRM-30937-2018 to place on record the statements of Manjeet Singh, who was called for further examination and it was admitted by him that four different DSPs had conducted the separate enquiry one after the other.

Still further the argument that the complainant Sartaj Singh in a cross case got himself admitted in the private hospital is of no consequence as he was initially admitted at the first instance in the Government Hospital, Assand by one Bhupinder Singh. Thereafter, to government hospital at Karnal from where he was referred to Government Hospital, Sector 32, Chandigarh but since there was rush and he was not been attended to, he was taken to private hospital for treatment and in any case, the injury report and medical opinion are of the government hospital. Moreover, he was admitted in hospital by Bhupinder Singh, who is PW-10, therefore, the injury suffered by him further stands verified by the witness. It is further contended that a gandasi was recovered from the spot, which shows that the side of Manjeet Singh was fully armed.

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Mr. A.D.S. Sukhija, learned counsel for the respondents raised the preliminary objection that the application under Section 319 Cr.P.C. can be instituted only by the State. However, it does not lie in the mouth of counsel for the respondents to say so as it is suffice is to note for the purpose of present case that the second application under Section 319 Cr.P.C. in the cross case for summoning Palwinder Singh and others too was filed at the behest of complainant Sartaj Singh.

The submissions of Mr. P.S. Ahluwalia, learned counsel for the petitioner Manjeet Singh that the trial Court wrongly placed reliance on the report of four DSPs as none was available as well as the argument that the medical report of Sartaj Singh was obtained as he had shifted from a government hospital to private hospital has been well met and explained. Manjeet Singh, himself has admitted in his cross-examination that four different DSPs had conducted separate enquiry one after the other and the injury report of Sartaj Singh is of government hospital as well as the opinion of Doctor is of said government hospital. Hence, the said argument cannot be sustained.

The next argument of learned counsel for the petitioner that there was no occasion for the defence counsel to cross examine as no defence counsel was present too has no merit as the defence counsel for Manjeet Singh, accused in the cross case was duly present.

Hon'ble the Apex Court in the case of ***Brijendra Singh and others Versus State of Rajasthan, Criminal Appeal No.763 of 2017, decided on 27.04.2017***, while allowing the appeal and setting aside the order summoning the appellants under Section 319 Cr.P.C. held in para 15 as under:-

“15. This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the 'evidence' recorded during trial was nothing more than the statements which was already there under Section

161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny."

Applying the test in the present case, no further evidence than what was available during investigation and was relied upon by the Investigating Agency has been brought to the notice of this Court nor there was any before the trial Court. Only when a strong and cogent evidence is led against a person, that such power under Section 319 Cr.P.C. can be exercised. It is not to be exercised in a casual manner.

No doubt, Manjeet Singh, PW-1 is the injured witness and his

presence cannot be doubted as he has received fire arm injuries alongwith the deceased. However, a perusal of the statement of Manjeet Singh indicates over implication on the face of it. No injury has been attributed to either of the respondents except that they were armed with weapons. The gun shot injuries are attributed only to Sartaj Singh. Even if, for the sake of arguments, some one was present with Sartaj Singh, it cannot be said that they had any common intention or there was meeting of mind or knew that Sartaj Singh would be firing.

In these circumstances, no fault can be found with the order dated 05.09.2017 passed by the trial Court dismissing the application under Section 319 Cr.P.C. filed by Manjeet Singh for summoning Sukhpal Singh and Tejpal Singh sons of Gurdev Singh and Parab Sharan and Preet Samrat sons of Mohan Sarup. The said order dated 05.09.2017 accordingly deserves to be upheld and the revision petition bearing CRR-28-2018 is dismissed.

CRR-3238-2018 and CRM-M-55631-2020 (O&M)

As stated above, both the petitions are filed against the order dated 21.04.2018 passed by the trial Court, vide which, the petitioners were summoned as additional accused in exercise of powers under Section 319 of Cr.P.C. to face trial for commission of offence under Sections 323, 324, 326, 341 read with Section 149 of IPC.

The injuries suffered by Sartaj Singh are as under:-

“i. 6 x 1 on lacerated wound on left temporo parietal region of skull bleeding present (injury No.3).

ii. 4 x 2 cm red contusions on anterior posterior part of left leg

below knee (injury No.6)

- iii. Pain on right hip join (injury No.7)
- iv. 4 x 3 cm red contusions on right anterior part of chest swelling tenderness present (injury No.8).
- v. Horizontal incised wound of size 3 x 1 cm with complete cut of cartilage on left ear pinna bleeding present (injury No.4).
- vi. 4 x 2 red contusions abrasion on posterior part of left hand middle finger (injury No.5)
- vii. 10 x 1 cm incised wound oblique on right frontal area with profuse bleeding present (injury No.1).
- viii. 5 x 1 cm lacerated on right temporal area of skull bleeding present (injury No.2)."

As per the said injuries, the doctor opined that it would have turned fatal if the petitioner had not been continuously given treatment for eight days.

As per the report of DSP, placed on record as Annexure P-1, it is observed that "in case the version of Sartaj Singh are taken to be true that 10/12 persons attacked upon him, then there would have been sign of blows on the vehicle but before HC Balinder and other present, photograph of vehicle of Sartaj Singh were taken, there is not even a single dent on the vehicle and in the vehicle the sign of bullet is towards inside the vehicle and sikka of the bullet has been recovered from the back seat."

There is nothing before the trial Court or before this Court to enable the trial Court to come to different conclusion than what has been recorded by the concerned DSP. The fact that the bullet has been recovered from the back seat has further given doubt as to whether Sartaj Singh came out of the car to shoot or fired the shots while seating inside the car.

Manjeet Singh has admitted the presence of Nirvair Singh. Hence, at the time of the incident, it appears that there was only Amarjeet Singh, Manjeet Singh and Nirvair Singh from the complainant side in FIR No.477 and Sartaj Singh in the cross case. The recovery of gandasi in itself is not sufficient to summon the rest of them as Amarjeet Singh and Manjeet Singh too are shown to be armed with gandasi and are stated to have inflicted injuries on Sartaj Singh. Therefore, the power under Section 319 Cr.P.C. to summon the remaining respondents as an additional accused in the absence of any other evidence than the evidence that was already available with the Investigating Agency is against the well settled proposition of law.

Hon'ble the Apex Court in the case of ***Brijendra Singh*** (supra), while relying on the judgment in the case of ***Hardeep Singh Versus State of Punjab, 2014 (1) R.C.R. (Criminal) 623*** observed in paragraph 12 reads as under:-

“12. The moot question, however, is the degree of satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and the related question is as to in what situations this power should be exercised in respect of a person named in the FIR but not charge-sheeted. These two aspects were also specifically dealt with by the Constitution Bench in Hardeep Singh's case and answered in the following manner:

“95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 Cr.P.C., though the test of prima facie case is the same, the degree of

satisfaction that is required is much stricter. A two-Judge Bench of this Court in *Vikas v. State of Rajasthan* [2013 (4) R.C.R. (Criminal) 948 : 2013 (6) Recent Apex Judgments (R.A.J.) 356: (2014) 3 SCC 321], held that on the objective satisfaction of the court a person may be “arrested” or “summoned”, as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

xx xx xx

105. Power under Section 319 CrPC is a discretionary and an extraordinary 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.”

The DSP, Assandh in his report (Annexure P-4) while referring the investigation conducted by Baljinder Singh, the then DSP observed that:

“The accused Rajwant Singh son of Gurcharan Singh was found to have visited the spot thereafter and Palwinder Singh son of Ran Singh has not been found to have been connected with the present offence. The allegations of the second party is only found against Sartaj Singh, Sarpanch. In addition to this, Sukhpal Singh, Tejwal sons of Gurdev, Prabh Sharan, Preet

Samrat sons of Mohan Sarup have not found in the present dispute. The allegations levelled by Sartaj Singh in this statement, Amarjeet Singh son of Sardar Ran Singh, Manjeet Singh son of Mahinder, Sukhdeep Singh son of Satnam Singh, Satkar Singh son of Rajwant Singh, Narvair son of Tirlok Singh residents of Bandrala have been involved. Amarjeet Singh has died. In addition to this, Palwinder Singh son of Ran Singh has been found to be at his home at the time of incident. He has not been connected with the present incident in any manner and he has been found to be innocent. Rajwant Singh son of Gurcharan Singh has been found to have visited the spot after the quarrel.

After conducting the enquiry by DSP, Assandh on 26.10.2016, it has been found that the names of Sukhdeep Singh and Satkar have been falsely written.”

No evidence except the statement of Sartaj Singh, which has already been investigated into by the concerned DSPs was relied upon by the trial Court to summon, which was not sufficient for exercising power under Section 319 Cr.P.C.

As per statement of Sartaj Singh, Palwinder Singh and Satkar Singh gave him lathi blows on the head. Manjeet Singh, Amarjeet Singh, Rajwant Singh, Narvair Singh and Sukhdev Singh were holding gandasi. Manjeet Singh, Amarjeet Singh and Rajwant Singh gave him gandasi blows on the head and face. All the injuries are stated to fall in the offence under Sections 323, 324, 326, 341 read with Section 149 of IPC. In case, so many people as mentioned above were giving gandasi and lathies blows on the head, Sartaj Singh was bound to have suffered more injuries, which would

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not have left him alive and probably he would have been killed on the spot. He seems to have escaped with only such injuries as have invited offence only under Sections 323, 324, 326, 341 read with Section 149 of IPC. Therefore, the trial Court erred in exercising his jurisdiction summoning the other accused where exaggeration and implication is evident on both sides.

In view of the above, both the petitions bearing CRR-3238-2018 and CRM-M-55631-2018 are allowed and order dated 21.04.2018 passed by the trial Court summoning the petitioners as accused is set aside.

28.08.2020
sandeep

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned	:	Yes
Whether Reportable	:	Yes