

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3279-2019 (O&M)
Date of decision: 13.03.2020

Samma

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Deepanshu Matya, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

CRM-9251-2020

For the reasons stated in the application, same is allowed and copies of the zimni orders dated 25.02.2020 and 07.03.2020 passed by the trial Court are taken on record as Annexure A-1 (colly.).

CRM stands disposed of.

CRR-3279-2019

On oral request made by learned counsel for the petitioner, date of hearing fixed in the main case is preponed from 11.05.2020 to today.

Prayer in this revision petition is for setting aside the order dated 18.10.2019 passed by the Additional Sessions Judge, Mewat, in FIR No.711 dated 30.12.2016 under Sections 148, 149, 323, 452, 285, 302, 307, 506 of the

Indian Penal Code (for short 'IPC'), vide which application filed by the prosecution under Section 319 of the Code of Criminal Procedure (for short 'Cr.P.C.') for summoning respondents No.2 to 19 as additional accused, was dismissed.

Brief facts of the case are that the aforesaid FIR was registered at the instance of Samma against 17 persons, out of which, 04 persons could not be arrested, 03 persons namely Tarif, Juber and Naseem, are facing the trial and remaining persons were declared innocent. It is stated in the FIR that on 30.12.2016, cousin of the complainant, namely Idrish had helped the police to arrest Shakeel etc., as they were indulged in the business of cow slaughtering and on that account, the accused persons, armed with country-made pistols and other weapons, came to house of the complainant and caused injuries. It is further stated in the FIR that all the accused persons caused injuries to the complainant and his mother. The police, after completion of the investigation, submitted the challan against aforesaid three persons, by declaring other accused as innocent. Thereafter, the complainant appeared as PW1 and reiterated the version given in the FIR. Similarly, victim/PW5 also reiterated the version given in the FIR.

The complainant/prosecution, thereafter, moved an application under Section 319 Cr.P.C. for summoning the remaining persons as additional accused. The application was contested by respondents No.2 to 19 and the same was dismissed, vide impugned order dated 18.10.2019, operative part of which reads as under: -

"...I have heard learned counsel for accused already facing trial and learned Public Prosecutor for the State.

Learned Public Prosecutor submitted that evidence and documents available on file will go to show that the proposed additional accused is involved in the commission of offence, there are specific allegations in the evidence of PW5 and specific role played by the said accused in furtherance of their common intention in the incident reported by way of registration of present FIR.

Learned Public Prosecutor for State, has vehemently contended that there is sufficient material on record to show that exercising the power under Section 319 Cr.P.C, as prima facie case against these persons has been made out.

He has relied upon the decision reported in Michael Machado and another Vs. Central Bureau of Investigation and another, (2000) 3, Supreme Court Cases, 262, the Hon'ble Supreme Court has held that power vested under Section 319 is discretionary in nature and when such trial court deals with an issue as to whether a person is to be added as additional accused or not, the said discretion should be exercised judicially and very sparingly. It is further observed that the court must keep in mind the entire evidence as on the date of the consideration of the issue and also the materials and evidence pressed in the service for invoking section 319 of Code of Criminal Procedure.

Further, in the decision reported in Ram Pal Singh and ors Vs. State of U.P. & anr., AIR 2009 S.C. 1723 the Hon'ble Supreme Court has held that for invoking the power under Section 319 of Code of Criminal Procedure, it has to be satisfied from evidence before the court that a persona against whom no charge had been framed, but, whose complicity appears to be clear should be tried together with the other accused.

Learned counsel for accused already facing trial today submitted that the names of the proposed additional accused was shown as accused in the FIR. The Investigating Officer after conducting investigation by the participation of senior police

officers found that there was no possibility of this accused to have participated in the reported incident and complainant wants to falsely implicate him in this case. Investigation of the police has already come out with the result that the proposed accused is not involved in the commission of offence. It was argued that the present court cannot rely on the evidence of PW5 alone without application of mind to mechanically allow the present application filed by the public prosecutor to implicate the additional proposed accused, which is not sustainable in law.

Learned counsel for the accused already facing trial has placed relied upon 2007 (58) ACC 254, Mohd. Shafi Vs. Mohd. Rafiq and another in which it has been held that:

“before the court exercises, its jurisdiction in terms of section 319 Cr.P.C. it must arrive at the satisfaction that there exists a possibility that the accused so summoned is in all likelihood would be convicted.”

Further counsel for the accused has placed reliance upon 209 (66) ACC 273, Brindaban Das and others Vs. State of West Bengal, in which it has been held that:

“The exercise and powers under section 319 Cr.P.C. should be exercised with great care and perspicacity.”

Hon’ble Apex Court in 2009 (65) ACC 971, Ram Singh and others Vs. Ram Niwas and another, has laid down that:

“Mere existence of prima facie case not sufficient to exercise jurisdiction under section 319 Cr.P.C. and the court must arrive at satisfaction that evidence adduced on behalf of prosecution if unrebutted would led to conviction of the person sought to be added as accused.”

Learned counsel for the accused has vehemently argued that the power conferred under section 319 Cr.P.C. should be used very sparingly and the court must be satisfied that there was strong suspicion. An extraordinary case has to be made out and sufficient and cogent reasons are required to be assigned by the

court as has been laid down in 2009 (66) ACC 32, Sarabjit Singh and another Vs. State of Punjab and another.

It is well settled that during trial on the basis of evidence, if the court is satisfied that any other person other than the person arrayed as accused is in the case are involved in the commission of offence, then the court can invoke the powers u/s 319 Cr.P.C. and implicate them as a party in the proceedings.

Appreciating the evidence of then the first complaint is Ex.P1 of PW1 Samma in which she has named 22 persons and others who participated in the incident of 30.12.2016 at 12.30 PM, when Idrish caught a TATA 407 of Sakil which was used for transportation of cow and when police impounded the vehicle, these 22 named persons and others, armed with lathi, katta, farsa, hockey, and gid assaulted the complainant side. The incident left behind several injured persons. The another independent witness of the injured is PW5 who names 20 persons armed with deadly weapon like lathi, katta, farsa and stones assaulted the complainant side leaving behind the injured. The witness covers the incident that one of the accused persons was carrying a pistol and he had fired from the said pistol and similarly the country made pistol was also fired upon by Samma. However, it is clarified that none of the injured received any bullet shot injury as these complainant person had narrowly escaped the bullet fires. It was only injured Sarifan who had received injuries and later died in the hospital.

Closely appreciating the word to word evidence that it is the case of the prosecution that incident began due to a quarrel which arose regarding impounding of a TATA 407 vehicle of Sakil, which was used for transportation for cow, by Idrish. It is the version of PW1 that vehicle was impounded the same and due to the enmity, the accused side came armed with deadly weapons. However, appreciating the medical records of the injured persons that the injured is named Sarifan. This injured has been treated at Nuh

Hospital and later at AIIMS at Delhi. This injured had later died and her postmortem conducted at AIIMS. In the same incident Gulam Mohd., Samma, Akbar, Shad, Jakir and Yusuf received injuries amounting to section 307 IPC.

Presently these are three accused already facing trial today and four are wanting arrest and remaining 16 persons have been have been declared innocent on the basis of investigation of the senior police officers.

So far, the examined witnesses have not come out with any specification as who were the actual persons present on the spot when the incident took place as the total number of assailants had varied in the statement of PW1 and PW5. This means when there is no specific role attributed to these 16 named persons in specific, when read in the complaint Ex.P1, the statement of these above independent witnesses PW1 and PW5, and there is nothing material to disbelieve the investigation of senior police officers who found this set of accused persons to be innocent.

In these circumstances, application against the named persons Sakeel, Jaikam, Bassi, Julfikar, Jahid, Rijwan, Shokeen, Jahid, Sikandar, Mustkeem, Jaheer, Hakam, Kalam, Samim and Jarjish stands dismissed.

*On the basis of above discussion it transpire that there is no suffice material to summon these proposed accused. Yet in very recent judgment of Hon'ble Apex Court titled **Shiv Parkash Misra Vs. State of UP, Criminal Appeal No.1105 of 2019**, date of Dec. 23.07.2019 has held as under:*

“The standard of proof employed for summoning a person as an accused person under section 319 Cr.P.C. is higher than the standard proof employed for framing a charge against the accused person.”

In appreciation of brief facts when the allegations levelled by the prosecution witnesses against the proposed accused are very sketchy, I do not find sufficient material on record to summon

him under any provision of law. Hence, application is devoid of merit, stands dismissed.

It is clarified that the findings of this Court on the present application shall be construed only for the purpose of consideration of the application under section 319 Cr.P.C. and the same shall not be construed and expression of opinion on the merits of the main case.”

Learned counsel for the petitioner has argued that the complainant, while appearing as PW1, has named 22 persons, who came at the spot and caused injuries to the complainant side. Similar is the statement made by PW5, naming all the accused persons. It is stated by both these witnesses PW1 and PW5 that the accused persons were carrying pistols and had fired shots from the same as well as from country-made pistol. It is further argued that even the accused side suffered injuries and therefore, the incident is not denied even by the proposed accused persons.

In reply, learned State counsel has submitted that medical record of the proposed accused persons, relied upon by the petitioner, was not produced by the prosecution, when the concerned doctor was examined.

After hearing learned counsel for the parties, I find no merit in the present petition.

- (a) It has come in the statements of complainant/PW1 and the victim/PW5 that the accused persons opened fire, however, none of the injured received any bullet shot injury and one Sarifan, who had received injuries, later on, died in hospital, qua which three accused persons are facing the trial.
- (b) The trial Court has recorded a finding that apart from three accused persons, four persons, who are nominated, are evading their arrest

and 16 persons were declared innocent, as no material had come on record against them during the investigation conducted by senior police officer regarding their involvement.

- (c) A perusal of the FIR shows that though number of persons are named in the FIR, however, there are allegations against the persons, who have already been challaned by the police and are facing the trial or are evading the arrest and are yet to be arrested.
- (d) The statements made by PW1 and PW5 regarding use of firearm is not supported by medical evidence, except qua injured Sarifan, who died later on.
- (e) The trial Court has also recorded a finding that in the statements of PW1 and PW5, no specific role is attributed to 16 proposed accused persons, from the perusal of complaint Ex.P1, on the basis of which, FIR was registered.

In view of the above, finding no ground to interfere in the findings recorded by the trial Court, present revision petition is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

13.03.2020
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No