

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

Date of Decision : January 5th, 2021

1. CRR- 188-2020

Zile Singh @ Lila PETITIONER(S)

VERSUS

State of Haryana and another RESPONDENT(S)

2. CRR- 258-2020

Rajesh PETITIONER(S)

VERSUS

State of Haryana and another RESPONDENT(S)

3. CRR- 459-2020

Hansbir @ Hansi and another PETITIONER(S)

VERSUS

State of Haryana and another RESPONDENT(S)

4. CRR- 506-2020

Rishi Pal and others PETITIONER(S)

VERSUS

State of Haryana and another RESPONDENT(S)

5. CRR- 719-2020

Mukesh PETITIONER(S)

VERSUS

State of Haryana and another RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Sushil Sheoran, Advocate, for the petitioners in CRR-188-2020, CRR-258-2020 and CRR-459-2020.
Mr. S.S. Mor, Advocate, for the petitioner in CRR-506-2020.
Mr. Amardeep Hooda, Advocate, for the petitioner in CRR-719-2020.
Mr. Minderjeet Yadav, Deputy Advocate General, Haryana.

...

Sanjay Kumar, J.

These five revisions, filed under Sections 397 and 401 Cr.P.C., are amenable to disposal by way of this common order.

Zile Singh @ Lila, son of Ram Kumar, filed CRR-188-2020 against the order dated 13.12.2019 passed by the learned Additional Sessions Judge, Rohtak, summoning him as an additional accused on the applications moved by the respondents under Section 319 Cr.P.C. in relation to FIR No.141 dated 06.05.2011 on the file of Police Station Kalanaur. By order dated 03.02.2020, this Court stayed the proceedings *qua* the petitioner before the trial Court.

Similarly, Rajesh, son of Dharam Singh (petitioner in CRR-258-2020), Hansbir @ Hansi, son of Mahabir, and Sunil @ Sulhar, son of Ram Kishan (petitioners in CRR-459-2020), Rishi Pal, son of Mahabir Singh; Naresh @ Nishu, son of Diwan Singh; and Sombir son of Ram

Kanwar (petitioners in CRR-506-2020) and Mukesh, son of Ram Phal (petitioner in CRR-719-2020) approached this Court assailing the very same order dated 13.12.2019 summoning them also as additional accused on the same applications moved under Section 319 Cr.P.C. Interim relief was granted in all these matters on the same lines as in CRR-188-2020.

These cases have a long and checkered history. They pertain to FIR No.141 dated 06.05.2011 on the file of Police Station Kalanaur, District Rohtak, registered under Sections 302, 307, 148 and 149 IPC along with Section 25 of the Arms Act, 1959. Sita Ram, the 2nd respondent in these cases, at whose behest the subject FIR was registered, complained that two incidents took place on the relevant date whereby he and his family were physically attacked and injured. Vishnu, his brother-in-law, was stated to have died due to the gun-shot injury suffered by him. Various persons were named by Sita Ram as members of the gang that had attacked them. 15 of the accused so named were however found to be innocent and only 18 of them were subjected to trial. After commencement of the trial, while deposing as PW-1, Sita Ram mentioned the names of 22 persons, some of whom were not amongst those facing trial.

Thereafter, on 06.02.2015, he moved an application through the Public Prosecutor under Section 319 Cr.P.C. to summon 16 more persons. Again, on 10.02.2015, he moved another application naming 4 persons while deleting 4 of those mentioned in the first application. These applications were allowed by the trial Court on 01.12.2015, summoning the newly named 16 persons.

Aggrieved thereby, some of the persons so summoned filed revisions before this Court in CRR-1112-2016, titled '**Zile Singh @ Lila vs. State of Haryana and another**', and batch. The said revisions were allowed by way of separate orders dated 09.03.2017 and in consequence, the order dated 01.12.2015 passed by the trial Court was set aside.

Thereupon, Sita Ram approached the Supreme Court by way of Criminal Appeal No. 1136 of 2018 and batch. By orders dated 07.09.2018 passed therein, the Supreme Court set aside the orders dated 09.03.2017 passed by this Court in CRR-1112-2016 and batch and remanded the cases for decision afresh. Upon such remand, this Court reheard the revisions and disposed them of by common order dated 25.11.2019. Thereby, this Court again set aside the order dated 01.12.2015 passed by the trial Court and remanded the matter to it with a direction to examine the allegations made against each and every person who was sought to be summoned as an additional accused. It was pursuant to this remand order that the impugned summoning order dated 13.12.2019 came to be passed by the trial Court.

At this stage, the scope of the remand order dated 25.11.2019 passed by this Court and the requirements that flowed therefrom need to be examined. Therein, this Court noted that the trial Court's order did not reflect examination of the individual roles played by the 16 persons, who were sought to be summoned, in the context of the depositions of the prosecution's witnesses before the Court as well as the statements of the injured recorded under Section 161 Cr.P.C. and the contents of the FIR. It was observed that summoning of additional accused in a murder trial was

a serious matter and it was incumbent upon the trial Court to examine the case in accordance with the guidelines applicable to Section 319 Cr.P.C., as spelt out by the Supreme Court in **Hardeep Singh vs. State of Punjab and others [(2014) 3 SCC 92]**.

This Court further observed that unless a *prima facie* case was made out against the persons sought to be summoned as additional accused, no such order should be passed. This Court also noted that the petitioners' counsel had compiled information in a tabulated form, in respect of the role, if any, attributed to each of the persons irrespective of whether they were petitioners before this Court or not, with reference to the version in the FIR; the statements of the victims and witnesses recorded under Section 161 Cr.P.C.; and the depositions of the prosecution's witnesses in the Court. This tabulated information was taken on file as Annexure 1. This Court categorically recorded that this tabulated information in Annexure 1 was the reason why the trial Court was being directed to re-decide the applications filed under Section 319 Cr.P.C., after examining the allegations with regard to each and every person who was sought to be summoned as an additional accused, within a time frame.

It may be noted that in Annexure 1, the name of each of the newly accused persons was mentioned and against each such name, the description/role, if any, given in the FIR; the version of PW-1 (Sita Ram) in his deposition; the version of the victims recorded under Section 161 Cr.P.C. (if any); the version of other witnesses recorded under Section 161 Cr.P.C.; and the remarks of the learned counsel were furnished.

This being the substance of the order passed by this Court, perusal of the impugned summoning order dated 13.12.2019 reflects that the learned Additional Sessions Judge, Rohtak, did not strive to live up to the expectation reposed in her. She merely narrated the factual history of the case and noted the arguments of the learned Public Prosecutor, assisted by the learned counsel for Sita Ram, that the proposed accused ought to have been summoned to face trial as they too had participated in the offences but during investigation, the police had colluded with them and declared them innocent. She also noted that Sita Ram, while testifying before the Court, had reiterated the contents of his original statement and had attributed specific roles to each of them.

This *ipse dixit* statement of the learned Additional Sessions Judge is not borne out by the record as the persons who were sought to be roped in belatedly were not identifiable, in terms of their names and parentage, from the original statement of Sita Ram that had formed the basis of the FIR. Further, the learned Additional Sessions Judge noted that this Court had referred to Annexure 1 in the order dated 25.11.2019 but baldly brushed it aside, stating that no such document had been produced. Surprisingly, she then stated that the prosecution's version stood fortified by the earlier order dated 01.12.2015 passed by her predecessor. Significantly, this was the order which had been set aside in the earlier round of litigation. The said order therefore could not have been the basis for any conclusion being drawn in the fresh exercise pursuant to the remand order. The learned Additional Sessions Judge then went by the statement made by Sita Ram as PW-1 and summed up that

specific allegations had been made by him against certain persons while no grounds were made out to summon some others. She recorded that a *prima facie* case was made out against Naresh, Mahabir, Mukesh, Sulhar, Ranbir, Rishi, Sombir, Lila, Hansi, Satish son of Satbir and Rajesh. They were ordered to be summoned to face trial for commission of offences under Section 302, 307, 323, 109, 148 and 149 IPC. Naresh, Ranbir, Rishi, Sombir and Rajesh were also summoned to face trial for offences punishable under Sections 25 and 27 of the Arms Act, 1959.

Significant to note, there were crucial discrepancies in relation to the naming of these additional accused in the context of their parentage. Notably, some of the accused facing trial or mentioned earlier had the same names but with different parentage. For instance, one Lila, son of Jai Lal, is already facing trial but Lila, son of Ram Kumar, is now sought to be implicated. However, the original statement of Sita Ram did not mention the involvement of two Lilas. This aspect of the matter was not even looked into by the learned Additional Sessions Judge.

That apart and more importantly, the learned Additional Sessions Judge did not even call upon the parties to produce a copy of Annexure 1, which was the very basis for the remand order dated 25.11.2019. Despite the clear notation therein that this tabulated statement furnished various particulars which needed to be examined, the learned Additional Sessions Judge did not even pay lip service to the required exercise by verifying the contents of the said tabulated statement and blithely dismissed it by saying that it had not been produced.

Unfortunately, no efforts were even made by the learned Additional

Sessions Judge to procure a copy of the document so as to undertake the exercise in right earnest and in terms of the remand order.

In the absence of such an exercise on the part of the learned Additional Sessions Judge, the summoning order dated 13.12.2019 is rendered wholly unsustainable. It is not for this Court to undertake the exercise in terms of the remand order as it is for the learned Additional Sessions Judge to do the needful in the first instance.

The summoning order dated 13.12.2019 is accordingly set aside and the matter is remanded once again to the file of the learned Additional Sessions Judge, Rohtak, to undertake the exercise in proper spirit in keeping with the directions of this Court in the earlier remand order dated 25.11.2019 in CRR-163-2016 and batch. This exercise shall be completed expeditiously and in any event, not later than two months from the date of receipt of a certified copy of this order.

Registry is directed to append a copy of Annexure 1 filed in CRR-163-2016 along with this remand order for the assistance of the learned Additional Sessions Judge, Rohtak, and to take necessary further action thereon.

The revisions are allowed to the extent indicated above.

January 5th, 2021.
Kang

(Sanjay Kumar)
Judge

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