

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

Date of Decision: 01.10.2021

(1) CRR-366-2021 (O&M)

MONU @ MC

.... Petitioner

Versus

STATE OF HARYANA AND ANOTHER

... Respondents

(2) CRR-417-2021 (O&M)

AZAD @ DHOLLA

... Petitioner

Versus

STATE OF HARYANA AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Pardeep Chhoker, Advocate
for the petitioners.

Mr. Ashok Singh Chaudhary, Addl. AG Haryana.

Mr. Rajesh Bansal, Advocate
for respondent No.2.

HARNARESH SINGH GILL, J.(Oral)

This order shall dispose of the above noted two petitions as both of them arise out of a common order dated 11.02.2021 passed by the learned Additional Sessions Judge, Panipat, Haryana.

Vide the impugned order, the learned Additional Sessions Judge, Panipat, has allowed the application under Section 319 Cr.P.C. filed by complainant/respondent No.2 and thereby summoned the petitioners as additional accused to stand the trial in FIR No.679 dated 20.10.2018, under Sections 302/34, 404 IPC, registered at Police station Samalkha, District Panipat, Haryana.

Learned counsel for the petitioners submits that the learned Court below, while passing the impugned order, has not appreciated and considered the facts and the evidence available on record. He further submits that as per the prosecution version, the alleged occurrence took place 19.10.2018. However, on the date of occurrence, the petitioners had been away to a distant place and even according to the CCTV footage, the petitioners were not present at the spot, which is why the police did not file any charge-sheet against them. Still further, it is submitted that the complainant had named the petitioners in the present case, only on the basis of a hear-say evidence and that the eye-witness(s) did not name the petitioners, as the one involved in the crime in question.

On the strength of the aforesaid submissions, it is submitted that there is no material on record, which can justify the summoning of the petitioners as additional accused, which fact has clearly been brushed aside by the learned trial Court. Moreover, mere naming the petitioners to be the persons involved in the crime, by the complainant/respondent No.2 in his testimony before the Court as PW-1, cannot be made the basis for summoning the petitioners, especially when the other evidence does not establish any guilt on the part of the petitioners.

On the other hand, learned State counsel assisted by the learned counsel for respondent No.2, submits that while appearing as PW-1 before the trial Court, the complainant in his testimony has specifically named the petitioners as the one involved in the crime and therefore, no fault could be found with the impugned order. Even otherwise, it is submitted that at the stage

of allowing the application under Section 319 Cr.P.C., the Court has to prima facie satisfy itself about the complicity of the accused sought to be summoned as additional accused.

I have heard learned counsel for the parties.

It is settled law that power under Section 319 Cr.P.C. can be exercised by the Court at any stage from commencing of the trial; recording of the evidence; deposition of the witnesses or before the conclusion of the trial. Reliance can be placed upon the judgment of the Hon'ble Apex Court in Criminal Appeal No.875 of 2021 titled Manjeet Singh Vs. State of Haryana and others, decided on 24.08.2021.

Still further, this Court in CRR No.3780 of 2018 titled Kamlesh Vs. State of Haryana and others, decided on 09.09.2020, has considered in detail the powers of the Court to summon an additional accused under Section 319 Cr.P.C. and has recorded the following finding:-

“18. This Court is conscious of the fact that power under Section 319 Cr.P.C., 1973 to arraign an accused is to be exercised sparingly and where there is strong and cogent evidence, but the Court is duty bound to give due weightage to the evidence collected and the statements recorded at the time of the registration of the FIR, during investigation and during trial.”

In the instant case, the trial Court, while passing the impugned order has recorded a categorical finding that in his examination-in-chief, complainant-Samar Singh (PW1) has reiterated the facts mentioned in his complaint on oath naming accused Jaibir and also Vicky @ Gonder, Dholla @

Azad @ Sectary and Monu @ MC having committed murder of his son Ravinder and that their names also find mention in the disclosure statements of accused Jaibir @ Zebra, Vikram @ Vicky @ Gonder and Amit @ Ganja.

In view of the said fact coupled with the law laid down by the Hon'ble Apex Court as also this Court, the plea of alibi, being now taken by the petitioners, cannot be gone into the present proceedings, particularly, when the legality of the order passed by the trial Court under Section 319 Cr.P.C. is under question. The petitioners, of course, would be at liberty to raise such plea during the course of trial regarding which the trial Court would return its findings on the basis of evidence.

In view of the above, finding no merit in the present petitions, the same are hereby dismissed.

Nothing expressed herein shall be construed as an expression of opinion on the merits of the case.

01.10.2021

Aman Jain

(HARNARESH SINGH GILL)

JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No