

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

CRR-1135-2021 (O&M)

Date of Decision:- 8.10.2021

Kanwar Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Sandeep Singh, Advocate for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 2.8.2021 passed by the Court of learned Additional Sessions Judge, Panipat whereby an application filed by the petitioner under Section 319 Cr.P.C. for summoning Ramphal, Krishan, Roshan, Ravi, Joginder, Amit, Rishi, Ajay and Sachin has been dismissed.
2. The FIR in the instant case i.e. FIR No.472 dated 20.12.2017 under Sections 148, 149, 323, 324 and 506 IPC, Police Station Matlauda, District Panipat was lodged at the instance of the petitioner Kanwar Singh wherein it is alleged that on 18.12.2017, when he alongwith his brothers Sher Singh and Balwan and alongwith his wife Sangeeta was present at his house, then 10-12 persons entered their house who were carrying weapons like 'gandasi', sword, 'sticks' and 'jelly'. The said persons were Ramphal, Krishan, Roshan, Gulu, Ravi, Joginder, Sumit, Amit, Sonu and Nirbhey. The aforesaid persons are stated to accompanied by 2-3 other unidentified

persons. All of them attacked the complainant and other members of his family in which they all sustained serious injuries. After causing injuries, the accused left from their house while stating that they had been spared but would be killed in future. They also issued threats to the neighbours. The complainant and others were taken to Government Hospital, Panipat. Kanwar Singh – petitioner was found to be sustaining 3 injuries from a sharp edged weapon. Complainant's brother Sher Singh sustained one injury. Complainant's wife Sangeeta also sustained one injury. His other brother Balwan sustained two injuries who later expired after 15-20 days of the occurrence.

3. The matter was investigated by the police and upon conclusion of the same, challan was presented against Sonu @ Sunil, Gulu @ Rajbir and Sumit, while the remaining were kept in column no. 2.
4. After framing of charges, statement of the complainant PW-1 was partly recorded on 23.4.2019 and during the course of which an application dated 23.4.2019 (Annexure P-3) was moved on behalf of the prosecution under Section 319 Cr.P.C. seeking summoning of 9 additional accused i.e. Ramphal, Krishan, Roshan, Ravi, Joginder, Amit, Rishi, Ajay and Sachin.
5. The trial Court considered the aforesaid application and dismissed the same vide impugned order dated 2.8.2021.
6. The learned counsel for the petitioner, while assailing the impugned order, has submitted that since the complainant i.e. PW-1 Kanwar Singh, while in the witness box has categorically named the private respondents i.e. respondents no. 2 to 10 to be amongst the assailants, the trial Court fell in error in not summoning the said persons to face trial. The learned counsel

has submitted that the names of the said persons also figure in the statement of Balwan Singh recorded under Section 161 Cr.P.C. and that in these circumstances, the private respondents also ought to have been summoned.

7. I have considered the aforesaid submissions and have also perused the impugned order.
8. It is no doubt correct that as per FIR as many as 13 persons, out of which 10 are specifically named, are stated to have attacked the complainant and other members of his family and the complainant and others were also found to have sustained injuries. While complainant was found to have sustained three injuries, his brother Balwan sustained 2 injuries and his second brother and complainant's wife sustained one injury each. During the course of investigation, it is from the accused Sonu @ Sunil, Gulu @ Rajbir and Sumit that recovery of sticks and 'gandasis' has been effected and not from any other accused who have been declared innocent. The number of injuries found on the person of the complainant and injured is rather incommensurate with the number of armed assailants. In other words, in case all 13 assailants were to cause injuries to the family of the complainant, the injuries caused would have been much more, particularly when the complainant and others were not armed and there was hardly any resistance. No doubt, the petitioner has named the private respondents when he stepped into witness box but no specific role has been attributed to them. A Constitution Bench of Hon'ble Supreme Court in Hardeep Singh v. State of Punjab and Others (2014) 3 SCC 92, while discussing the scope of section 319 Cr.P.C. held as follows:

105. Power under Section 319 Cr.P.C. 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.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

9. Hon'ble Supreme Court in a recent judgement, delivered on 17.09.2021 in Ramesh Chandra Srivastava vs. State of U.P., (Criminal Appeal No. 990 OF 2021), while relying upon Hardeep Singh's case (supra), reiterated the legal position as regards summoning under section 319 Cr.P.C. in the following words:

"The test as laid down by the Constitution Bench of this Court for invoking power under Section 319 Cr.P.C. *inter-alia* includes the principle that only when strong and cogent

evidence occurs against a person from the evidence the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than *prima facie* case which is applied at the time of framing of charges.”

10. The evidence as has been led in the instant case before the trial Court so far, is nothing more than the self serving statement of the complainant which is absolutely just what he had stated in FIR without there being any specific attribution to any of the 13 accused. As discussed above, the investigating agency had found some incriminating evidence against the three accused who were challaned, in the shape of blood stained weapons whereas no such evidence was found against the respondents 2 to 10. In case the complainant and his family had been attacked by 13 armed persons, the total number of injuries on all the injured would have been much more than the 7 injuries which were found to be existing collectively on all four injured, given the fact that complainant and his family which included a lady were caught unaware and there was no resistance from their side. The said factual position does not tend to confirm presence or participation of a dozen armed assailants, as is being alleged. In these circumstances, this Court does not find any infirmity in order dated 2.8.2021 of trial Court, in dismissing application filed by prosecution under section 319 Cr.P.C.

11. The revision is sans merit and is hereby dismissed.

12. It is, however, clarified that the aforesaid order shall not debar the prosecution from moving any fresh application under Section 319 Cr.P.C. at a later stage in case some cogent and convincing material surfaces during

the course of recording prosecution evidence, indicating involvement of any of the respondents No. 2 to 10.

8.10.2021
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(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No