

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

CRM-M-46577-2021

DATE OF DECISION:- 07.12.2021

BALKAR SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Bikramjeet Singh Jatana, Advocate
for the petitioner.

SUVIR SEHGAL, J. (ORAL)

This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of impugned order dated 07.07.2021, Annexure P-6, passed by learned Sessions Judge, Mansa, vide which the petitioner has been summoned as in additional accused to face trial in FIR No.100 dated 25.10.2016 lodged for offences under Sections 452, 323, 354 and 34 of the Indian Penal Code, 1860 at Police Station Bareta, District Mansa in Revision Petition filed by complainant-respondent No.2 challenging order dated 11.06.2019, Annexure P-5, passed by the JMIC, Budhlada, vide which application filed under Section 319, Cr.P.C. by the complainant-respondent No.2 was dismissed and all subsequent proceedings arising therefrom qua the petitioner.

Facts, in brief, leading to the filing of the petition are, FIR, Annexure P-1, was registered on the statement of a 23 years old prosecutrix on the allegation that on 23.10.2016 at about 02:30 P.M., Bhola Singh and his son, Balkar Singh (present petitioner), who had purchased two acres of land from her uncle regarding which a dispute was pending with her father, forcibly felled trees from the land and were taking them in their tractor towards their house, when on spotting her working in the court yard of her house, Balkar Singh stopped the tractor and Bhola Singh instigated him to disgrace her. Upon this, both of them entered her house, Balkar Singh molested her and tried to drag her inside. When complainant-prosecutrix resisted his attempts, he assaulted her and inflicted injuries on her shoulder and left chest. Bhola Singh, too hit her with a stick. On her raising an alarm, her mother, Manjit Kaur, came to save her, and Bhola Singh attacked her also. As both the ladies started raising a loud noise, both father and son fled from the spot on their tractor. The motive behind the incident was that Bhola Singh intended to take possession of road facing land, regarding which a dispute was pending and the offence was committed by the accused to pressurize the family of the complainant. The ladies were admitted for treatment at Government Hospital, Budhlada. After investigation, a report was submitted, wherein it was found that Balkar Singh was not present at the spot, rather he had gone to village Kamalpur, Police Station Darba, Sirsa to bring his sister from her in-laws house and he was declared innocent. Challan was presented against Bhola Singh and the trial Court took cognizance of the case against him and

framed charge under Sections 452 and 323, IPC. After recording of statement of complainant-prosecutrix, Annexure P-4, an application was moved under Section 319 read with Section 216, Cr.P.C. for summoning, Balkar Singh, as an additional accused and for trying him, which was dismissed by the trial Court, vide order, Annexure P-5. Being aggrieved with the said order, the complainant-prosecutrix filed a revision petition, which has been accepted, vide order, Annexure P-6, and Balkar Singh has been ordered to be summoned as an additional accused, and it has been ordered that the trial Court will apply the provisions under Section 216, Cr.P.C., frame fresh charges and re-commence trial in accordance with law.

Counsel for the petitioner has contended that the order passed by the Revisional Court is not sustainable as the Court ignored the fact that during investigation, the petitioner was found to be innocent on the basis of tower location of his mobile and he was not found to be present at the place of occurrence. By placing reliance upon the judgments of the Supreme Court in *Sarabjit Singh and another Versus State of Punjab and another 2009 (16) SCC 46, Brijendra Singh and others Versus State of Rajasthan 2017 (3) RCR (Criminal) 374* and this Court in *Gurmeet Kaur versus State of Punjab and another 2010 (1) RCR (Criminal) 195*, it has been contended that there was no fresh evidence before the Court, nor did the Court record its satisfaction that the material on the record would reasonably lead to the conviction of the person sought to be summoned as an accused.

I have considered the argument addressed by counsel for the petitioner and perused the impugned order as well as the material placed on the record.

The settled position in law is that power under Section 319 is discretionary and extra ordinary and is to be used sparing only in a case if the situation so warrants. It is to be exercised when there is strong and cogent material before the Court and not in a casual and cavalier manner. A Constitution Bench of the Supreme Court in ***Hardeep Singh Versus State of Punjab, 2014 (3) SCC 92*** has held as under:-

“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 unrebutted, 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.”

Supreme Court has spelt out that the test, which has to be applied, is the one, which is more than prime facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if it goes unrebutted, would lead to conviction.

The material on the record has to be examined in the above background. From the evidence of the complainant-prosecutrix, it is evident that she has consistently and categorically deposed regarding the role of Balkar Singh. She has alleged that Balkar Singh scuffled with her with a bad intention, tried to drag her inside, molested her and inflicted injuries on her. The evidence of the prosecutrix has been placed on a much higher pedestal than that of an injured witness by the Supreme Court in *The State of Punjab Versus Gurmit Singh and others (1996) 2 SCC 384*. The testimony of a prosecutrix does not require any corroboration and is sufficient to record the conviction of the accused. Therefore, the deposition of the prosecutrix alone is sufficient to make out a prime facie case to proceed against the accused, Balkar Singh and the Court is not required to look for any other supportive or new material.

In view of the above position, this Court is of the opinion that there is no illegality or infirmity in the order passed by the Revisional Court summoning the petitioner, Balkar Singh, as an additional accused and directing the trial Court to exercise power under Section 216, Cr.P.C. to frame a fresh charge and commence fresh trial in accordance with law.

Finding no merit in the instant revision petition, it is dismissed with no order as to costs.

(SUVIR SEHGAL)
JUDGE

07.12.2021
Kamal

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