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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1623-2021 (O&M)
Date of Decision: 06.12.2021

Gurkirat Singh Bhinder

.. Petitioner

Vs.

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Sanjeev Kumar Bawa, Advocate for the petitioner.

...

Manoj Bajaj, J. (Oral)

The petitioner is aggrieved against the order dated 28.10.2021 (Annexure P-1), whereby the application moved by complainant under Section 319 Cr.P.C. was allowed and the petitioner has been summoned as an additional accused to face trial in case FIR No.50 dated 05.04.2018, under Sections 307, 326, 324, 323, 148 and 149 IPC, registered at Police Station Mukerian, District Hoshiarpur.

The facts in brief leading to the revision petition are that on the basis of a complaint given by Rajbir Singh, the above FIR No.50 dated 05.04.2018 was registered against the accused persons including the petitioner. The relevant contents of the FIR read as under:

“Statement of Rajbir Singh s/o Hardip Singh, caste Saini, resident of Manjhpur, Police Station Mukerian, District Hoshiarpur, age 33 years, mobile 7009857598, stated that I am the resident of the above mentioned address and doing the agricultural work. On dated 03.04.2018, as a matter of routine, I was going to gym on my motorcycle bearing No.PB-54-B-1711 make of Bullet towards Mukerian from my house at about 06:15 a.m. Then at about 06:30 a.m. When I reached on the turn of village Musahibpur, then I saw one vehicle make of

XUV colour white, was already parked in a running condition. When I crossed the above mentioned vehicle then driver of the vehicle all of sudden hit the vehicle in my motorcycle with an intention to kill me and because of which, I fell down on the road along with my motorcycle. Then from the SUV vehicle, Pawan @ Shonky, resident of Mansa armed with datar and Gagandeep s/o Rampal, r/o Mansa armed with khanda, Gurkirat Bhinder, r/o Motala armed with sword, Deepu Pehlawan, r/o Bhangala armed with khanda along with three-four unknown persons, who were armed with baseball and handle of spades and alighted out of the car and while alighting out from car Deepu Pehlawan exhorted a lalkara to catch hold Rajbir Singh and he should not escape today, on which, Pawan @ Shonky gave a blow of datar duly armed thrice with the intention to kill me which hit continuously on the right side of skull of my head and also hit on the little above of the elbow of my left arm. In the meantime, Gagandeep gave blow of khanda he duly armed twice which hit on the bicep of my right hand and on wrist of my right arm. Then Gurkirat Singh Bhinder gave three blow of sword which hit below the knee of right leg. Deepu Pehlawan gave a blow of khanda duly armed which hit below the knee of left leg. So on account of excess injury, I fell down on surface and while I was lying down three-four un-identified persons gave blow of baseball and handle of spades on my back and on the right side of my waist and on the other part of my body. In the meantime, my father Hardeep Singh arrived at the spot. My father were known to these persons so, I raised an alarm "Maar Ditta, Maar Ditta" then the above persons while seeing my father at the spot and gathering of the people because of highway ran away from the spot along with their respective weapons in their above vehicle. My father called Ambulance at 108 which reached at the spot. My father put me in the ambulance and got admitted at Civil Hospital, Mukerian and later on doctor referred me to the DMC, Hospital in the Ludhiana after giving me the first aid on account of excess injuries where I am under treatment at DMC, Ludhiana. The cause of dispute is that I had an a dispute with Pawan @ Shonky and Gagandeep and on account of this dispute Pawan @ Shonky, Gagandeep, Gurkirat Bhinder, Deepu Pehlawan and three four unknown persons caused injuries to me with an intention to kill me and got me injured. Due legal action be taken against above culprit, namely, Pawan @ Shonky, Gagandeep, Gurkirat Bhinder, Deepu Pehlawan and three four unkown persons."

After completion of investigation in the case, a final report

under Section 173 (2) Cr.P.C. was filed against the co-accused, whereas the petitioner was declared innocent.

Learned counsel for the petitioner has argued that the trial

Court has erroneously exercised the jurisdiction under Section 319 Cr.P.C, as there is nothing on record to connect the petitioner with the alleged crime. He submits that in fact on 03.04.2018, the petitioner was present at Chandigarh to pursue his claim for compassionate appointment on account of death of his father and in support of this argument, he has drawn the attention of the Court to the enquiry report by Senior Superintendent of Police, who concluded that the petitioner was not present in Mukerian, when the occurrence took place. He further submits that the impugned order is not sustainable and warrants interference by exercise of revisional jurisdiction.

During the course of hearing, it is not disputed by learned counsel that the petitioner was specifically named by complainant in the FIR, and was stated to be armed with a sharp edged weapon, who had caused injuries to the victim on his right leg (below knee). Learned counsel fairly states that in all, eleven injuries were suffered by the complainant/injured, but neither the MLR of the victim nor the final report under Section 173(2) Cr.P.C. have been placed on record.

After hearing the learned counsel, this Court finds that the complainant had levelled specific allegations against the petitioner and his name is also contained in the FIR. The stand of the learned counsel that the petitioner was seen around 4-5 a.m. to board the bus for Chandigarh is not enough to establish that indeed he reached Chandigarh. Apart from it, the enquiry report, which does not contain any date, cannot be attached any significance, as the same is against the provisions of law relating to investigation in an offence. Here, it will be relevant to note that during investigation, accused has no right to be heard and reference can be made to

decision of Hon'ble Supreme Court rendered in **Dinubhai Boghabhai**

Solanki v. State of Gujarat and others, 2014 (4) SCC 626, wherein it was

held as under:-

"The High Court had quashed and set aside the order passed by the Special Judge in charge of CBI matters issuing the order rogatory, on the application of a named accused in the FIR, Mr. W.N.Chadha. The High Court held that the order issuing letter rogatory was passed in breach of principles of natural justice. In appeal, this court held as follows:

"89. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report under Section 173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alterma partem is implicit, but whether the occasion for its attraction exists at all.

92. More so, the accused has not right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has not participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173 (2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has not right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to given an opportunity of being heard under certain specified circumstances.

98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating the procedure of investigation does not

attract such a course in the absence of any statutory obligation to the contrary."

Besides, the sole ground raised by the petitioner to set up a plea of *alibi* is not worth acceptance at this stage, however, it shall be open for him to lead his defence evidence when the appropriate stage arises during trial. Further, a perusal of the impugned order reveals that the trial Court has considered the evidence recorded during trial and has rightly exercised the jurisdiction under Section 319 Cr.P.C. as material on record suggests the alleged participation of petitioner in the crime. Thus, the impugned order dated 28.10.2021 (Annexure P-1) does not suffer from any illegality and impropriety, warranting exercise of revisional jurisdiction.

Dismissed.

06.12.2021
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No