

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

269

CRR-452-2021 (O&M)

Date of decision: 02.03.2022

RAMESH GANDHI

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Ms. Rupinder Kaur Thind, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG Haryana.

Mr. Sandeep Kumar Goyat, Advocate
for respondent No.2.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

Challenge is to the order dated 07.03.2020 passed by the learned Additional Sessions Judge, Sirsa, vide which the application under Section 319 Cr.P.C., filed by the complainant, has been allowed and the petitioner has been summoned as an additional accused in FIR No.114 dated 08.09.2017, under Sections 148, 458, 460, 323, 302, 149 and 285 IPC and Section 25 of the Arms Act, at Police Station NS Chopta, District Sirsa.

Learned counsel for the petitioner submits that the learned trial Court, 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, the alleged occurrence took place

on 07.09.2017; that deceased, namely, Hanuman, was the father of the complainant; that, during the inquiry/investigation conducted by the Deputy Superintendent of Police, it was found that the rifle of the petitioner was deposited with the Police, qua which the receipt was also produced before the Investigating Officer and accordingly, the petitioner was kept in column No.2 and that co-accused, namely, Mandeep @ Punjabi and Ranjit @ Billa, have specifically stated that the petitioner was not present at the spot. He further submits that except the complainant, no other prosecution witness has been examined thus far; that complainant-Sandeep Kumar, while appearing as PW-9 before the trial Court, has only stated that the petitioner was armed with a gun and no specific injury has been attributed to him and that it was only on this assertion of the complainant, the petitioner has been summoned by the learned trial Court. Still further, it is submitted that neither any gun shot has been fired by the petitioner nor there was any gun shot injury on the person of the deceased and that there was no gun shot injury on the person of injured-Pardeep either.

On the strength of the aforesaid submissions, it is submitted that there is no material on record, which can justify the summoning of the petitioner as an additional accused, which fact has clearly been brushed aside by the learned trial Court. Moreover, mere naming the petitioner to be the person present at the spot armed with a gun, by the complainant/respondent No.2 in his testimony before the Court as PW-9, cannot be made the basis for summoning the petitioner, especially when

the other evidence does not establish any guilt on the part of the petitioner.

In support of his contentions, learned counsel for the petitioner relies upon the judgment passed by Hon'ble Supreme Court in Shiv Prakash Mishra vs State of Uttar Pradesh and another, 2019 (5) R.C.R. (Criminal) 946 and Ramesh Chandra Srivastava vs State of Uttar Pradesh and another, 2021 (4) R.C.R. (Criminal) 219.

Per contra, learned State counsel assisted by learned counsel for the complainant submits that complainant, namely, Sandeep Kumar, is the only eye-witness of the occurrence, who while appearing before the trial Court as PW-9 has specifically named the petitioner with the allegation that being a member of an unlawful assembly, he was armed with a gun and that the prosecution agency has not given any cogent reason for placing the petitioner in column No.2. 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 the learned counsel for the parties.

It is the case of the petitioner that he was neither present at the spot, nor armed with any gun and still further, the petitioner was not attributed any injury. The allegations against the petitioner do not seem to satisfy the satisfaction that is required for summoning an accused under Section 319 Cr.P.C. The standard of proof for summoning a person

as an accused person under Section 319 Cr.P.C. must be higher than the one employed for framing the charge against the accused. While dealing with the aforesaid aspect of the matter, the Hon'ble Apex Court in Shiv Prakash Mishra's case (supra), has held as under:-

9. *"The standard of proof employed for summoning a person as an accused person under Section 319 Cr.P.C., 1973 is higher than the standard of proof employed for framing a charge against the accused person. The power under Section 319 Cr.P.C., 1973 should be exercised sparingly. As held in Kailash v. State of Rajasthan and another 2008(2) RCR (Criminal) 200: (2008) 14 SCC 51, the power of summoning an additional accused under Section 319 Cr.P.C., 1973 should be exercised sparingly. The key words in Section are it appears from the evidence..... any person..... has committed in offence. It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, the discretion under Section 319 Cr.P.C., 1973 would be used by the Court."*

The petitioner was found innocent during investigation. It could not even be established on record whether the petitioner was attributed any injury and even as per the version of the complainant himself, the petitioner had allegedly fled away from the spot. Thus, the material on record, does not make it a fit case to summon the petitioner as an additional accused.

The matter can be looked from another angle. It is the case of the complainant that the petitioner armed with a gun had come to the place of occurrence along with other co-accused. However, it does not

seem to the common prudence that a person coming with a premeditated mind at the spot with a gun, would flee without even firing or attempt a shot. This clearly points towards a false implication of the petitioner.

In view of the above, the present revision petition is allowed and the order dated 07.03.2020 passed by the learned Additional Sessions Judge, Sirsa, is hereby set aside, qua the petitioner.

(HARNARESH SINGH GILL)
JUDGE

02.03.2022

Aman Jain

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No