

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

CRM-M-13118-2022

Date of Decision:-**09.08.2022**

SIMRANJIT SINGH GHARIYAL

... Petitioner(s)

Versus

STATE OF PUNJAB AND ANOTHER

... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

-.-

Present:- Mr. Rahul Ram Pal, Advocate
for the petitioner.

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KARAMJIT SINGH, J. (Oral)

Present petition has been filed by the petitioner seeking setting aside of the order dated 11.12.2019 (Annexure P-5) passed by the Court of learned Judicial Magistrate Ist Class, Ludhiana in criminal case having FIR No.145 dated 30.10.2016 (Annexure P-1) registered under Sections 448, 427, 511, 506, 149 IPC at Police Station Dugri District Ludhiana whereby the application moved by the petitioner/complainant to summon Ranjit Singh Gharyal, Swaran Singh, Dilbagh Singh and Satinder Singh @ Raju as additional accused was dismissed and order dated 8.2.2022 (Annexure P-7) passed by the Court of learned Additional Sessions Judge, Ludhiana vide

which the revision filed by the petitioner against the aforesaid order had been dismissed.

The counsel for the petitioner submits that both the impugned orders are illegal and deserve to be set aside. The counsel for the petitioner further submits that FIR in the present case was registered against aforesaid persons and some other persons including respondent No.2-Tapinder Singh @ Bunty. The counsel for the petitioner further submits that at the time of the occurrence all the aforesaid persons trespassed into the house of the complainant and the entire incident was captured in the CCTV camera, which was affixed at the spot of occurrence. The counsel for the petitioner further submits that CD of the aforesaid CCTV coverage was handed over to the police but the police officials who were influenced by the opposite party, had totally ignored the aforesaid CCTV footage. The counsel for the petitioner further submits that after completion of investigation the police presented challan only against respondent No.2 and after the framing of charges the statements of prosecution witnesses were recorded and even petitioner also appeared in the witness-box and his examination-in-chief was recorded and thereafter an application under Section 319 Cr.P.C. was moved and the same has been declined by the trial Court as well as the revisional Court vide impugned order (Annexures P-5 & P-7, respectively). The counsel for the petitioner further submits that during the evidence the CD of aforesaid CCTV footage was produced and even the same was viewed by the Presiding Officer of the trial Court and in the said CD it is clearly visible that Ranjit Singh Gharyal, Swaran Singh, Dilbagh Singh and Satinder Singh @ Raju also trespassed into the house of the petitioner along with

respondent No.2, at the time of the occurrence. The counsel for the petitioner further submits that in these circumstances more than *prima facie* evidence is available on the record to summon Ranjit Singh Gharyal, Swaran Singh, Dilbagh Singh and Satinder Singh @ Raju as additional accused under Section 319 Cr.P.C.

The State has not opposed the aforesaid assertions raised by the counsel for the petitioner.

I have considered the submissions made by the counsel for the petitioner.

Admittedly, Ranjit Singh Gharyal, Swaran Singh, Dilbagh Singh and Satinder Singh @ Raju were named in the FIR, which was registered on the basis of the statement of the petitioner against respondent No.2 and aforesaid persons, who allegedly trespassed into the house of the complainant at the time of the occurrence. The matter was investigated by the police and after completion of investigation, police presented challan only against respondent No.2 while Ranjit Singh Gharyal, Swaran Singh, Dilbagh Singh and Satinder Singh @ Raju were found to be innocent. After the framing of the charges, the some of the prosecution witnesses were examined, which also included part examination of the petitioner, in which the petitioner produced CD of the CCTV footage alleged to be that of the occurrence in question. Thereafter the prosecution moved an application under Section 319 Cr.P.C. but the same was dismissed by the trial Court vide order Annexure P-5 and the revision filed against the said order was dismissed by the Court of learned Additional Sessions Judge vide order (Annexure P-5).

I have gone through both the said orders.

From the perusal of Annexure P-5 it appears that the aforesaid CCTV footage was viewed by the Presiding Officer of the Court concerned and the said Court observed that only respondent No.2-Tapinder Singh was seen entering the house of the complainant at the time of the alleged incident. In the impugned order Annexure P-5, the trial Court further observed that police conducted number of inquiries with regard to incident in question and only thereafter the police presented challan under Section 173 Cr.P.C. against respondent No.2.

Admittedly, the petitioner filed application under Section 319 Cr.P.C. only after the examination of nine prosecution witnesses. The State counsel, who is having advance notice of the petition apprised the Court that by this time, twenty prosecution witnesses have been examined. There is no doubt that the provisions of Section 319 Cr.P.C. could be invoked at any stage from commencing of the trial till its conclusion. No doubt, the Magistrate can summon persons not originally charge-sheeted, but that can only be done when fresh material is brought on record.

Now it is well-settled law that for the purpose of summoning additional accused under Section 319 Cr.P.C., 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. The Hon'ble Apex Court in **Brijendera Singh vs. State of Rajasthan, 2017(3) RCR(Criminal) 374**, observed that in the absence of such satisfaction, the Court should refrain from exercising power under Section 319 Cr.P.C. The Hon'ble Apex Court

in **Manjit Singh vs. State of Haryana and Ors., 2021(4) RCR(Criminal) 25**, has held that power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary power and it is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. Only where strong and cogent evidence occurs against a persons from the evidence led before the Court that such power should be exercised and not in a casual and cavalier manner.

In the instant case the petitioner has failed to establish that more than *prima-facie* case as exercised at the time of framing of charge, is made out against Ranjit Singh Gharyal, Swaran Singh, Dilbagh Singh and Satinder Singh @ Raju. So the trial Court rightly declined the application moved by the petitioner under Section 319 Cr.P.C. vide order Annexure P-5. Even there is no illegality in the impugned order Annexure P-7 passed by the Court of Additional Sessions Judge, Ludhiana.

Consequently, the present petition is hereby dismissed being devoid of merits.

09.08.2022

Gaurav Sorot

**(KARAMJIT SINGH)
JUDGE**

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No