

119

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11786-2019

Reserved on :19.04.2022

Date of decision : 01.06.2022

Manohar Singh

...Petitioner

Vs.

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. K.S.Kahlon, Advocate for the petitioner.

Mr. Dhruv Dayal, Sr.DAG., Punjab
assisted by ASI Jagdish Singh.

Mr. M.S.Basra, Advocate for respondent No.2.

MANOJ BAJAJ, J.

Petitioner has filed this petition under Section 482 Cr.P.C for quashing of FIR No.13 dated 05.03.2017 registered under Sections 307, 326, 324, 323, 148 and 149 Indian Penal Code, 1860 at Police Station Kahnuwan, Gurdaspur as well as order dated 30.01.2019 (Annexure P-14), whereby trial Court has summoned him as an additional accused by exercising power under Section 319 Cr.P.C.

The facts in brief leading to the petition are that on the basis of statement of Harwinder Singh s/o Pal Singh, the above FIR No.13 dated 05.03.2017 (Annexure P-1) was registered against the accused persons including the petitioner, and allegations therein read as under:-

“It is stated that I am resident above said address and do the work of agriculture. We are residing in the agriculture

fields. On 03.03.2017, my father had gone towards Village Tugalwal on bicycle. I was cutting fodder in my agriculture fields during evening at that time it was 06:30 PM. My father was returning home, when he reached near the house of Uttam Singh, then Uttam Singh armed with kirpan, Manohar Singh S/o Harbhajan Singh R/o Khushhalpur armed with Datar, Mandeep Singh @Sonu S/o Uttam Singh R/o Khushhalpur armed with datar, Amrik Singh S/o Teja Singh R/o Datarpur armed with Kirpan, Kartar Singh S/o Ujagar Singh R/o Beri armed with Datar, Jatinder @Bau S/o Amrik Singh R/o Datarpur armed with datar, Amandeep @ Monu S/o Balkar Singh R/o Village Sooch armed with datar, Daler Singh S/o Kartar Singh R/o Beri armed with datar came out from the house of Uttam Singh and Manohar Singh gave Lalkara and said he should be caught and killed so that we can take possession of the land. In the meantime the aforementioned persons attacked my father. Manohar Singh with his datar gave datar blow on my father which hit on the forehead of my father and Mandeep Singh @Sonu gave dasti datar blow to my father which hit on the backside of the head of my father. Then Amrik Singh gave kirpan blow on my father and my father warded off the same with his left arm and the same hit on his left elbow and my father fell in the wheat fields and Uttam Singh gave 2-3 Kirpan blows on my father which hit on his left leg above knee. Then Kartar Singh gave Datar blow on my father and the same hit on the right wrist of my father. Then Mandeep Singh gave datar blow on my father the same was warded off with his right hand and it hit on his right hand's fingers. Then Daler Singh gave datar blow to my father which hit on right hand of my father. Then Amandeep Singh gave datar blow on my father which hit on his left hand. Then Jatinder Singh @ Bau gave datar blow on my father which hit on his left feet. I raised raula "save me" and my family members came while shirking to the spot. I also ran forward to save my father. The aforementioned assailants when saw us coming, sat in a car and ran away from the spot. My father have received injuries at the hand of these assailants and I have witnessed this occurrence. Later I arranged for conveyance and got my father admitted at Civil Hospital, Gurdaspur where the doctor gave first aid and also conducted the MLR. Then on 03.03.2017 at 11.30 PM due to the injuries received by my father he was referred to Guru Nanak Hospital Amritsar. Due to the excessive injuries received by my father I got him admitted to Escorts Hospital Amritsar. I was going to police force Tugalwal to initiate legal process where en route you have met me. Legal action be taken against these persons."

After completion of investigation in the case, final report dated 31.05.2017 under Section 173 (2) Cr.P.C. (Annexure P-10) was submitted before the trial Court indicting total eight accused persons, whereas five persons including the petitioner were declared innocent, but after commencement of trial and upon examination of complainant, namely, Harwinder Singh as PW-2, an application under Section 319 Cr.P.C was filed through public prosecutor, whereupon the trial Court summoned Manohar Singh, Amrik Singh, Tejinder Singh @ Jatinder Singh @ Bau, Kartar Singh and Daler Singh as additional accused. Hence this petition.

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 the petitioner was not present in the town, much less at the place of occurrence and had gone to Jalandhar for getting his vehicle serviced, therefore, his plea of *alibi* was accepted by the inquiry officer, namely, Sareen Kumar (Superintendent of Police Gurdaspur). He has drawn the attention of the Court to the said enquiry report (Annexure P-2) and referred to the conclusion that the petitioner was not present in Gurdaspur, when the alleged occurrence took place. It is further pointed out by learned counsel that in the alleged occurrence, two accused persons, namely, Arjun and Mandeep also suffered injuries and a cross case was also set up. In support of his arguments, learned counsel has placed reliance upon the decision of Hon'ble Supreme Court passed in **“Hardeep Singh Vs. State of Punjab and others”, 2014 (1) R.C.R.(Criminal) 623** and submits that the impugned order is not sustainable and warrants

interference. He prays for setting aside the impugned order dated 30.01.2019.

On the other hand, learned counsel for the complainant has vehemently opposed the prayer, who has argued that the petitioner was very much present at the place of occurrence and the investigation was not conducted properly, because of the influence of the petitioner, who managed to get a favourable report from the Inquiry Officer by submitting his representation in respect of his innocence and his plea of *alibi* has been wrongly accepted by the Investigating officer also. According to him, whenever an accused relies upon plea of *alibi*, the onus is to be discharged by him by leading cogent evidence. He submits that the trial Court has carefully examined the facts and circumstances of this case and has rightly exercised the jurisdiction by summoning all the accused persons. He has further pointed out that the other four co-accused persons, who were summoned along with the petitioner have already joined the trial proceedings, whereas the proceedings are stayed only in respect of the petitioner. He prays that the petition be dismissed.

Learned counsel for the parties have been heard and with their assistance, the case file has been perused carefully.

During the course of hearing, it was conceded by learned counsel for the petitioner that the final report under Section 173 (2) Cr.P.C with regard to the petitioner is based upon conclusion of an inquiry report by Superintendent of Police (Investigation) Gurdaspur.

After hearing learned counsel for the parties and considering the material on record, this Court finds that the entire case of the petitioner/accused is founded upon the inquiry report (Annexure P-2) by Superintendent of Police,

Gurdaspur, who concluded that the petitioner Manohar Singh son of Harbhajan Singh as well as Amrik Singh son of Teja Singh, Tejinder Singh son of Amrik Singh, Kartar Singh son of Ujjagar Singh and Daler Singh son of Kartar Singh were not found present at the place of occurrence. A perusal of the said report reveals that this conclusion is based upon the discreet and open investigation allegedly conducted by the Inquiry Officer, who proceeded to accept the defence of the accused and issued directions to the SHO to declare them innocent. This direction was further followed by the SHO while filing the final report dated 31.05.2017 (Annexure P-10) under Section 173(2) Cr.P.C, wherein it is specifically mentioned that Superintendent of Police-Sareen Kumar (Investigating Officer, Gurdaspur) found these accused persons innocent and said conclusion has been approved by Senior Superintendent of Police on 06.03.2017. Thus, it is evident that the investigation qua the petitioner and others was not conducted in accordance with law much less by the Investigating Officer, who simply proceeded to follow the directions issued by his superior officers.

Concededly, the petitioner was named in the FIR, who was armed with sharp edged weapon and allegedly inflicted injuries to injured Pal Singh on his forehead. Therefore, the reliance placed upon by petitioner upon the inquiry report (Annexure P-2) is misplaced and it does not lend any strength to the case of the petitioner. Here, it will be useful to refer to the decision dated 21.02.2022 delivered in **CRR-3186-2018, “Manjeet Kaur Vs. State of Punjab and others”** wherein this Court while examining the similar kind of investigation made following observations:-

“At this juncture, this Court deems it necessary, to notice once again the trend adopted by senior police officers of state police department, who engage themselves in holding inquiries on the representations on behalf of the accused, to examine their innocence, after registration of FIR and during the pendency of the investigation, and this practice is prevalent largely in the State of Punjab for a long time. Such inquiry reports by the inquiry officers based upon the defence of the accused are often delivered in their favour, and during this exercise, the inquiry officers illegally assume judicial role. Through this procedure, the accused persons make an attempt to dig a secret tunnel to create an escape route to avoid punishment, as this kind of disintegrated procedure of investigation throws doubts on the prosecution case, and makes it fragile. But, at the same time, in order to combat with this menace, which attempts to pollute the stream of justice, the judiciary at all levels has to play a vital role in blocking these slip away points, because the procedure of inquiry has no legitimate sanctity, however, such extra legal reports certainly add burden upon the judicial process of criminal trial. Time and again this Court as well as Hon'ble Supreme Court have been reminding the trial Courts to act in accordance with the law at the stage of framing of charges and not to act as a mouthpiece of prosecution.

The senior officers are well aware of law relating to the investigations, but they deliberately violate the same for extraneous considerations to extend help to the accused by giving favourable reports in their favour and investigating officer, who is subordinate to such inquiry officer has no option, but to mould the final report to avoid the wrath of the senior police officer. This practice encourages criminals and gives rise to crime and though the State of Punjab enjoys power of superintendence upon the police department, but the State too has failed to check this illegal practice being carried out openly in every other criminal case. With these observations, it is expected that the State would take necessary effective steps to bring in order the procedure of investigation and prosecution of accused, in accordance with statutory provisions contained in Code of Criminal Procedure. This Court as well Hon'ble Supreme Court on various occasions have held that the accountability of the police officers and

their misconduct cannot be ignored and the necessary disciplinary/penal action must be initiated against such guilty officers. The reference in this regard can be made to “State of Gujarat Vs. Kishan Bhai and others”, 2014 (5) SCC 108. “

Thus, once the investigation is not carried out in a proper manner and an attempt is made by the concerned police official(s) to shield the accused by declaring him innocent, the trial Court is always justified in exercising the power under Section 319 Cr.P.C., if the evidence on record suggests involvement of the said accused in the alleged occurrence and commission of crime. So, in this background, the judgment relied upon by learned counsel for the petitioner in Hardeep Singh's case (supra) would not be applicable in the facts and circumstances of this case. By now it is well settled law that Section 319 Cr.P.C vests extra ordinary power with the trial Court, thereby empowering it to exercise this power to summon any other person as an accused, who has not been sent to face trial, but at the same time, such power can be exercised only on the strength of strong evidence indicating involvement of the said person in the commission of the offence.

Further, a perusal of the impugned order shows that the trial Court has carefully examined the material on record and has given valid reason for exercising the power, therefore, this Court does not find any illegality and impropriety in the said order. Apart from it, though the impugned order is revisable, but the said remedy was not adopted by the petitioner and had filed this petition by invoking inherent powers under Section 482 Cr.P.C seeking quashing of the FIR as well, but during the course of hearing, no such argument relating to the quashing of FIR was addressed by the learned counsel.

Resultantly, this Court has no hesitation in holding that the petition is without any merit and no interference is warranted by invoking inherent powers under Section 482 Cr.P.C.

Dismissed.

(MANOJ BAJAJ)
JUDGE

01.06.2022

vanita

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