

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-23904-2022 (O & M)****Date of decision:13.06.2022**

Balbir Singh

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Inderjit Singh Luthra, Advocate, for the petitioner.

JASJIT SINGH BEDI, J. (Oral)

The present petition by the complainant-petitioner under Section 482 Cr.P.C. has been preferred for quashing of the order dated 09.03.2022 passed in Criminal Revision No.25 dated 05.07.2017 (CIS No.CRR-569-2017, CNR No.PBLD01-01-01-2864-2017) by the Additional Sessions Judge, Ludhiana (Annexure P-8) against the order dated 17.03.2012 passed by the Judicial Magistrate Ist Class, Ludhiana, whereby the application under Section 319 Cr.P.C. was allowed in part in Criminal Case No.CHI/2515/2014 and the criminal revision dismissed by the Additional Sessions Judge, Ludhiana.

2. The brief facts of the case are that the petitioner is the first informant/complainant of FIR No. 104 dated 28.07.2014 under Sections 323, 325, 341, 34 IPC registered with Police Station Meharban, District Ludhiana. As per the said FIR, Sukhwinder Singh @ Ghasita son of Somnath, Ghulla son of Somnath, Happy son of Somnath, Jaspal son of Madan Lal, Madan Lal son of Kabal Singh, Mani son of Somnath assaulted

the son of the petitioner, namely, Amanpreet Singh and also caused injuries on the person of the petitioner-complainant with their respective weapons. On raising a hue and cry, the accused persons ran away from the spot. The bone of contention was that the accused persons were pressurizing the complainant party to withdraw the case against them under Section 376 IPC filed by the sister-in-law of the complainant, namely, Vidya Devi wife of Amarjit. The said Amarjit got admitted the petitioner and his son injured- Amanpreet Singh to the hospital. Based on the aforementioned allegation, the FIR came to be registered and a report under Section 173 was submitted against the respondents No.4 to 7, namely, Madan Lal son of Kabal Ram, Sukhminder Singh son of Madan Lal, Harvinder Singh @ Happy son of Som Nath and Manpreet Singh @ Mani son of Som Nath.

3. Thereafter, the statement of the complainant was recorded as PW-1 and that of his son-Amanpreet Singh as PW-2 (Annexures P-3 and P-4). After the cross-examination of the witnesses, an application under Section 319 Cr.P.C. was moved before the Magistrate for summoning the remaining accused persons who had not been challaned.

4. The application under Section 319 Cr.P.C. was partly allowed by the Trial Court thereby summoning five more accused/respondents No.8 to 12, namely, Prem Nath son of Kabal Ram alias Kabal Ram, Sukhpreet Singh alias Sukha son of Harjit Singh, Jaspal singh alias Rubbi, son of Madan Lal, Sukhwinder Singh son of Som Nath, Ghulla son of Som Nath. However, respondents No.2 and 3, namely, Mana son of Som Nath and Som Nath son of Kabal Ram were not summoned.

5. Aggrieved against the said order of the Trial Court, the petitioner preferred Criminal Revision CIS No.CRR 569 of 2017 dated

came to be dismissed by the Court of Additional Sessions Judge, Ludhiana vide order dated 09.03.2022. A copy of the aforesaid order is attached as Annexure P-8.

6. The learned counsel for the petitioner submits that the petitioner was prejudiced on account of the non-summoning of the accused/respondents No.2 and 3 whereas the said accused had committed serious offences against the petitioner and another witness who is also a victim.

7. The Trial Court as also the Revisional Court had adopted a casual attitude in not summoning the respondents No.2 and 3 despite the fact that the said accused had been categorically named in the depositions of the complainant and the injured witness. He, thus, contends that in view of the law laid down by the Hon'ble Supreme Court in the cases of ***“Michael Machado and another versus Central Bureau of Investigation and another, 2000 (3) SCC 262”*** and ***“Hardeep Singh versus State of Punjab, 2014 (1) RCR (Criminal) 647”***, the respondents No.2 and 3 also ought to be summoned under the provisions of Section 319 Cr.P.C.

8. Before proceeding further, it would be apposite to refer to the provisions of Section 319 Cr.P.C. The same are reproduced hereinbelow:-

“319 [Cr.P.C.](#) -Power to proceed against other persons appearing to be guilty of offence.-

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then-
 (a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;
 (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

9. The Hon’ble Supreme Court of India has dealt with the issue in hand in a number of judgments and two of the most celebrated judgements in this regard are discussed hereinbelow:-

In “**Michael Machado and another versus Central Bureau of Investigation and another, 2000 (3) SCC 262**”, the Hon’ble Supreme Court of India held as under:-

“11. The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.

12. But even then, what is conferred on the court is only a discretion as could be discerned from the words the court may proceed against such person. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at

which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons”.

In “**Hardeep Singh versus State of Punjab, 2014 (1) RCR (Criminal) 647**”, the Hon’ble Apex Court held as under:-

“Question No.IV

Q.IV: What is the nature of the satisfaction required to invoke the power under [Section 319](#) Cr.P.C. to arraign an accused? Whether the power under [Section 319](#) (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under [Section 319\(4\)\(b\)](#) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under [Section 319](#) Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different”.

10. A perusal of the aforementioned judgments would show that a prospective accused can be summoned even on the basis of the examination-in-chief and cross-examination as such is not required. However, what is required is that the Court records its satisfaction that there were reasonable prospects of the conviction of the accused sought to be summoned. Further, the degree of satisfaction required for summoning an accused must be more than that required for framing charges against the existing original accused.

11. Coming back to the facts of the present case, it may be pointed out that the complainant-petitioner has named four sons of Som Nath (respondent No.3) as accused in the FIR. The said accused are Harvinder Singh alias Happy, Manpreet Singh alias Mani, Sukhwinder Singh and Ghulla (Harvinder Singh alias Happy and Manpreet Singh alias Mani are challaned accused and Sukhwinder Singh as well as Ghulla have been summoned under Section 319 Cr.P.C.). However, respondent No.2 Mana Singh son of Som Nath and respondent No.3-Som Nath son of Kabal Ram have not been named in the FIR or by the injured-Amanpreet Singh during police investigation.

12. This fact assumes importance because it is not believable that the complainant and the injured would name four sons of Som Nath-respondent No.3 and leave out the fifth son, namely Mana-respondent No.2 and Som Nath himself. Thus, it is apparent that the complainant and his son-injured Amanpreet Singh have made a substantial improvement in their depositions in Court as PW-1 and PW-2. Therefore, it cannot be said that from the evidence on record, the persons sought to be summoned have committed any offence for which such persons could be tried together with the accused already facing trial.

13. In view of the above, finding no merit in the present petition, the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

June 13, 2022
Sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No