

CRR-4654-2016

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

**CRR-4654-2016 (O & M)
Reserved on: 19.05.2022
Pronounced on: 24.05.2022**

Sajjan Singh

...Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Anil Kumar Lamdharia, Advocate,
for the petitioner.

Mr. Ashok Singh Chaudhary, Addl. A. G. Haryana.

Mr. J.S.Saneta, Advocate,
for respondent No.2.

Mr. B.S.Saroha, Advocate,
for respondents No.3 to 8.

HARNARESH SINGH GILL, J.

Challenge in the present revision is to the order dated 08.11.2016 passed by the learned Addl. Sessions Judge, Panipat, whereby an application moved by the petitioner under Section 319 Cr.P.C., for summoning respondents No.2 to 8 as additional accused, to face the trial in case bearing FIR No.83 dated 23.02.2016, under Sections 148, 149, 302, 323, 325 and 120-B IPC, registered at Police Station Madlauda, District Panipat, was dismissed.

Learned counsel for the petitioner has contended that the petitioner in his statements before the police as well as the trial Court, had

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specifically named respondents No.2 to 8 to be part of an unlawful assembly, which had caused injuries to Sajjan Singh, Ram Niwas, Suresh, Naresh, Parveen, Jai Bhagwan and Ranbir and the murder of Pale Ram, and that respondents No.2 to 8 had actively participated in the occurrence, and that however, the trial Court wrongly drew a conclusion that the statements of the complainant before the police as well as the trial Court had not fulfilled the requirement of exercise of extraordinary powers conferred on the Court.

Learned counsel has further contended that the petitioner being the Sarpanch of the village, had actively participated in getting the panchayat land vacated from the illegal possession of the residents and had been awarded appreciation letter from the Deputy Commissioner, Panipat, for the same, and that respondents No.2 and 8 alongwith the accused already facing the trial, had nourished a grudge against the complainant due to his participation in the aforesaid act, and, therefore, had attacked upon him and others.

Learned counsel has further contended that the trial Court while passing the impugned order did not appreciate the matter in its right perspective and, therefore, the same is liable to be set aside and the application under Section 319 Cr.P.C. deserves to be allowed. In support of his contentions, the learned counsel relied upon the judgments rendered by the Hon'ble Supreme Court in Hardeep Singh Vs. State of Punjab, 2014 (1) RCR (Criminal) 623, and by a Coordinate Bench in CRR-1566-2021, titled as 'Neeraj Kumar @ Rocky and another Vs. State of Haryana and another', decided on 17.01.2022.

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On the other hand, learned counsel for respondent No.2 and learned counsel for respondents No.3 to 8 have contended that respondent No.2 was not present at the spot whereas no injury has been attributed to respondents No.3 to 8; that even as per the post mortem report, cause of death was the cardiac arrest; that names of respondents No.2 to 8 had simply been mentioned; that in the statements under Section 161 Cr.P.C., no fresh evidence was brought on record to show that respondents No.2 to 8 had caused any specific injury.

Learned counsel have further contended that the provisions enshrined under Section 319 Cr.P.C. are special in nature and the same seek to meet an extraordinary situation and the Court must form an opinion on the basis of evidence brought before it to find out as to whether a case is made sought against the persons sought to be summoned and to be tried together with the accused already in trial. They have further contended that respondents No.2 to 8 had not played any role in the commission of the offence and, therefore, they had not been challaned by the police. Still further, it is contended that the impugned order has been passed by the trial Court in the right and proper perspective and after appreciating the material on record. In support of their contentions, they relied upon the judgments rendered by the Hon'ble Supreme Court in Mohd. Shafi Vs. Mohd. Rafiq and another, 2017(2) RCR (Criminal) 762, and Kailash Vs. State of Rajasthan and another, 2008(2) RCR (Criminal) 200.

I have heard the learned counsel for the parties.

As per the prosecution version, on 23.02.2016, Satyawan, Kaptan, Raji, nephew of Satyawan and 3-4 other persons, Hawa Singh,

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Amit, Randhir, Rishipal, Saptal and Sumit, while armed with lathis, jellis and *gandasi*, came to the plot of the complainant for taking the possession forcibly; that when the complainant party came to know about the same, the complainant alongwith others reached the plot and found that the assailants had been quarreling with Pale Ram, Ranbir and Jai Bhagwan; that when the complainant resisted them, Satyawan had given a *gandasi* blow on his head; Kaptan had given a lathi blow on his left hand and that Satyawan's nephew had given a lathi blow in his chest. It is further alleged that Suresh, Ram Niwas, Pale Ram, Randhir, Jai Bhagwan, Naresh and Parveen had also received injuries in the occurrence, and that owing to the severe injuries sustained by Pale Ram, he had died.

Hon'ble the Apex Court in the case of Brijendra Singh and others Versus State of Rajasthan, Criminal Appeal No.763 of 2017, decided on 27.04.2017, while allowing the appeal and setting aside the order summoning the appellants under Section 319 Cr.P.C. held in para 15 as under:-

“15. This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the 'evidence' recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was

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collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.'"

Applying the test in the present case, no further evidence than what was available during investigation and was relied upon by the Investigating Agency, has been brought to the notice of this Court nor there was any before the trial Court. Only when a strong and cogent evidence is led against a person, that such power under Section 319 Cr.P.C. can be exercised. It is not to be exercised in a casual manner. The discretion granted under Section 319 Cr.P.C. has to be exercised very sparingly and with caution and only when the court is satisfied that some offence has been committed by such person.

No doubt, the complainant-injured named respondents No.2 to 8 in the FIR and his presence cannot be doubted as he had received injuries in the incident. However, a perusal of the statement of the complainant

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indicates over implication on the face of it. However, the petitioner has not attributed any specific role to respondents No.2 to 8. Merely because respondents No.2 to 8 had been named in the FIR and in the statement got recorded by the complainant before the trial court, would not be a ground to invoke the powers under Section 319 Cr.P.C. What is required is that the material, which is brought before the Court, must be of such a nature as would satisfy the Court that it would reasonably lead to conviction of the person sought to be summoned.

The trial Court has rightly held that there is no justification to exercise the powers under Section 319 Cr.P.C.

As a result of above discussion, no fault can be found with the impugned order dated 08.11.2016 passed by the learned Addl. Sessions Judge, Panipat, dismissing the application under Section 319 Cr.P.C. filed by the petitioner, for summoning respondents No.2 to 8 as additional accused. Accordingly, the impugned order dated 08.11.2016 is upheld, and the present petition is dismissed.

24.05.2022
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No