

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

226 - CRR-2564-2018

Date of Decision: 16.11.2022

Rai Varinder Singh

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. LS Sidhu, Advocate for the petitioner

Mr. Aman Dhir, DAG Punjab

Mr. Narinder Singh, Advocate for respondent No.2

Mr. Rahul Vijay Singh Chugh, Advocate for respondent No.3

Sandeep Moudgil, J.

This criminal revision petition has been preferred by the petitioner seeking quashing of the impugned order dated 09.02.2018 passed by the Addl. Sessions Judge, Mansa, vide which the application under Section 319 CrPC filed by the prosecution for summoning respondents No.2 & 3, as additional accused, has been dismissed, in case FIR No.24 dated 12.03.2017 under Sections 302/307/148/149/120-B IPC, Section 25/54/59 of Arms Act, registered at Police Station Bareta, District Mansa.

Learned counsel for the petitioner contended that both respondents No.2&3 have been declared to be innocent on the plea of alibi which cannot be taken by affidavit. In other words, as per Section 11 of the Indian Evidence Act, the plea of alibi has to be proved by cogent evidence, which can only be considered during trial. This proposition of law has not been followed by the enquiry officer while giving clean chit to the

respondents No.2 & 3. Moreover, the stand of the injured Sukhwinder Singh PW remained the same throughout. These facts have not been duly considered by the trial court.

It has been averred in the application that as per FIR, there are specific allegations against Gurpreet Singh s/o Dhanantar Singh, resident of Bareta (respondent No.2) that he has raised 'Lalkara' and asked the co accused to shoot at deceased Rajinder Singh etc. and the eye witness and injured Sukhwinder Singh stated in his evidence before the police that Jaswinder Singh alias Jassi Singh s/o Piara Singh, resident of village Sirsiwala, Tehsil Budhlada, District Mansa (respondent No.3) armed with iron rod came to the spot with other co-accused. He further stated that Jassi Singh alongwith two unidentified persons gave rod blows on his head. The police kept both the above said accused in coloum no.2 after declaring them innocent. It is further averred that statement of Sukhwinder Singh recorded as prosecution witness in court and in his evidence, it has come that Gurpreet Singh and Jassi Singh came at the spot alongwith other coaccused and Gurpreet Singh raised 'Lalkara' to shoot at deceased and Jassi Singh gave rod blow on the head of Sukhwinder Singh. So, there is sufficient evidence on the file against Gurpreet Singh and Jaswinder Singh @ Jassi Singh. So, as per evidence, respondents No.2 & 3 have also committed offence under Section 302 read with section 34 of IPC. These material facts were ignored by the trial court.

Heard.

The trial court observed that though, PW1 Sukhwinder Singh has taken the names of above said persons as having committed the offence but

police did not take action against them though it is not out of place to mention here that standard of proof under section 319 Cr.P.C is much higher than of *prima facie* case. Though, averments made by the applicant/prosecution could have suffice being a prima facie case but to prove higher standard of proof, the complainant could not prove that alleged accused were involved in the commission of the offence. A perusal of the application shows that only attribution to respondent No.2 Gurpreet Singh is that he gave lalkara and to respondent No.3 Jaswinder Singh @ Jassi Singh is that he has given iron rod blow to Sukhwinder Singh. Their names did not find mention in the FIR and they are just shown as unknown person. These persons have been found innocent by the police during investigation and were not at all even challaned to face trial.

The trial court did not find any cogent and convincing evidence on the file to summon respondents No.2 & 3, though it has been stated in the statement made by the injured eye witness under section 161 Cr.P.C that there are only vague allegations of giving *lalkara* and giving rod blow against these persons. The trial court rightly relied upon the judgment of Hon'ble Supreme Court in case titled as '**Babu Bahi Bhima Bahi Bokhiria and another Vs. State of Gujrat and others, reported in 2014 R.C.R (Crl) 915**' that a person can be summoned under section 319 Cr.P.C as additional accused only where strong and cogent evidence occurs against him from the evidence led before the court and when no specific role is attributed to the accused, then he cannot be summoned under Section 319 Cr.P.C. Moreover, when the allegations against a person are general in character, he cannot be summoned on application under section 319 Cr.P.C to stand trial.

In view of the above discussion, this Court does not find any illegality or infirmity in the order passed by the court below, being just and proper.

Dismissed.

16.11.2022
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No