

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 116

CRR-1566-2021

Date of decision : 17.01.2022

Neeraj Kumar @ Rocky and another

..... Petitioners

VERSUS

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Nishant Chauhan, Advocate, for the petitioners.
Mr.Sumit Jain, Addl.A.G., Haryana.
Mr.Rahul Jaswal, Advocate, for the complainant.

DEEPAK SIBAL, J. (ORAL)

The matter has been taken up through video conferencing.

Through the present petition challenge is made to the order dated 05.10.2021, passed by the Additional Sessions Judge, Panipat (for short, the Trial Court), through which an application filed by the complainant under Section 319 Cr.P.C. for summoning of the petitioners was allowed.

Since after filing of the present petition petitioner No.1 has died, the present petition is being decided only qua petitioner No.2-Parveen @ Nath (hereinafter referred to as the petitioner).

The facts, in brief, which are required to be noticed for adjudication of the present petition are that Satbir son of Jile Singh (for short, the complainant) filed a complaint with the police as per which on 26.07.2018 at 10 p.m. when he reached near Shyam Baba temple, he saw Pardeep, Anil, Rishi, Rocky, Sandeep and the petitioner, who were all armed with pistols/revolvers etc. Out of fear the complainant hid himself and saw Rishi, Anil and Pardeep going inside the temple whereas the petitioner, Rocky and Sandeep kept standing outside. Thereafter Sombir Pujari and his nephew Sompal reached there and had a heated exchange with all the accused as a result whereof Sompal was shot dead by Rishi and

Pardeep.

After lodging a FIR under Sections 148, 149, 302, 506, 216, 120-B IPC and Sections 25, 54 and 59 of the Arms Act, 1959, the police investigated the matter. Such investigation resulted in declaring the petitioner and co-accused Neeraj Kumar @ Rocky (since deceased) to be innocent. However, the complainant while appearing before the Trial Court again specifically named the petitioner and Rocky to be part of the unlawful assembly which caused Sompal's murder. He further stated that his stand qua involvement of the petitioner and his co-accused in the murder of Sompal was fortified after seeing the CCTV footage of the incident.

On the basis of the complainant's statement made by him before the Trial Court; his consistent stand qua the involvement of the petitioner and because the police had not given any reason for declaring the petitioner to be innocent, an application was filed by the complainant under Section 319 Cr.P.C. for summoning the petitioner to face trial alongwith his co-accused which, through the order under challenge, was allowed by the Trial Court.

Learned counsel for the petitioner submits that the petitioner could have not been summoned to face trial as the complainant's version is not trustworthy; in the year 2005 one of the relatives of the complainant namely Ramesh had been murdered by several persons including co-accused Rishi and because the petitioner is purportedly close to Rishi, the complainant has named him to be one of the persons who caused Sompal's murder; earlier the complainant had named Sandeep to be one of the accused but later he had changed his stand and stated that it was Dayanand who was present alongwith the other co-accused and not Sandeep showing inconsistency in his stand; that after investigation the police had found the petitioner to be innocent and that simply on the basis of the bald statement of the complainant, made by him in his examination-in-chief, the petitioner could have not been summoned to face trial.

In *Sartaj Singh vs State of Haryana & Anr. Etc.* 2021 (5) SCC 337

while considering the powers of the Trial Court under Section 319 Cr.P.C. the Supreme Court has recently held as follows: -

“6.2. Considering the law laid down by this Court in Hardeep Singh (supra) and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under Section 319 CrPC, 1973 even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC, 1973 provided from the evidence (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial.”

As per the afore quoted observations of the Supreme Court the Trial Court can exercise powers under Sections 319 Cr.P.C. even on the basis of a statement made by a witness in his/her examination-in-chief and that a person not named in the FIR or a person though named in the FIR but who has not been charge-sheeted or even a person who has been discharged can be summoned by the Trial Court under Section 319 Cr.P.C. on the basis of evidence which may be in the form of a statement made by a witness in his/her examination-in-chief if after recording of such statement it appears to the Trial Court that such person is required to face trial alongwith his co-accused who are already being tried.

In the case in hand the complainant has been consistent with regard to the petitioner's involvement in Sompal's murder. In the initial complaint filed by the complainant, which formed the basis of the FIR in question, the petitioner has specifically been named to be one of the persons who was part of the unlawful assembly which caused Sompal's murder. Qua the petitioner's involvement the complainant's stand remained consistent as while appearing before the Trial Court he reiterated the petitioner's involvement. In fact, he specifically named the petitioner to be one of the persons who initially argued with the deceased and his uncle Sombir Pujari as a result of which heated exchange between them two of the

petitioner's co-accused fired upon and shot dead Sompal.

The inconsistency in the complainant's statement qua Sandeep would not further the petitioner's case as qua the petitioner the complainant's stand has been consistent throughout. So far as the argument of learned counsel for the petitioner that the petitioner was found innocent by the police is concerned, the same requires to be considered only to be rejected as no worthwhile reasons for arriving at such a conclusion are found in the charge-sheet.

In the light of the above discussion as also the law laid down by the Supreme Court in *Sartaj Singh's* case (supra), no error of jurisdiction, law or fact is found in the impugned order warranting any interference by this Court.

Dismissed.

17.01.2022
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No