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

CRR-3184-2019 (O&M)
Date of decision:09.05.2022

MANPREET SINGH @ LOVEPREET SINGH AND OTHERS

...Petitioners

Versus

STATE OF PUNJAB AND ANOTHER

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Pankaj Bali, Advocate
for the petitioners.

Mr. Hittan Nehra, Addl. A.G. Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. In FIR No.196 of 15.11.2016, registered at Police Station Sidhwan Bet, Ludhiana, offences constituted, under Sections 307, 447, 427, 148, 149 of IPC, and, under Sections 27/54/59 of Arms Act, are embodied.

2. In the FIR (supra), one Ranjit Singh Patwari son of Pritam Singh, is alleged to be armed with 12 bore gun, and, one, Manjit Singh son of Pritam Singh, is alleged to be armed with revolver, whereas, Upneet Singh son of Manjit Singh, is alleged to be armed at the crime site, with a *daang*, and, Amaninder Singh son of Baldev Singh, is alleged to raise a *lalkara* for making an assault, upon the victim-injured one, Balwant Singh. In pursuance to the relevant penal occurrence happening, at the crime site, hence as unfolded by the MLR prepared with respect to the victim one, Balwant Singh, MLR whereof is appended with CRM-37927-2019, he became entailed with the hereinafter extracted relevant injuries.

“1. Gunshot wound 1x1 cm present over chest wall left side 4cm

supero-lateral to left nipple.

2. Gunshot wound 1x1cm present over antero-lateral side right forearm 4cm below elbow joint.

3. Gunshot wound 1x1cm present over medial aspect right arm 8cm below shoulder joint.

4. Gunshot wound 1x1cm present over lateral aspect of right side chest wall 8cm lateral to nipple & 7cm below axilla.”

3. Though, during the course of investigations being made into FIR (supra), the Station House Officer concerned, after making an inquiry into the incriminatory roles of the petitioners herein, and, more especially after his examining about 50 persons of the village, and, besides his examining the call details concerned, as emanated from the apposite, cell phone, made a conclusion, that at the crime site, and, on the relevant day, the petitioners herein were not present there. The above conclusion is also supported by Annexure P-9. The above carried, the further consequence, of his not including the present petitioners, as accused in his report, filed under Section 173 Cr.P.C.

4. Therefore, the learned trial Judge concerned, drew charges only against the appearing before him accused, and, obviously did not open trial against the present petitioners. However, after the stepping into the witness box of the prosecution witness concerned, and, with his in his examination-in-chief rather *in tandem* with his previous statement recorded in writing, making an inculpatory echoing(s), with respect to the present petitioners, rather led the learned trial Judge concerned, to made an affirmative order, upon the public prosecutor's application cast under Section 319 Cr.P.C.

5. The order of 29.08.2019, is challenged by the petitioners before this Court.

6. The statement in the examination-in-chief of the PW-1 Balwant Singh, was sufficient within the ambit of the declaration of law, as, made by

the Hon'ble Apex Court in case titled **Hardeep Singh V. State of Punjab and**

others, Criminal Appeal No.1750 of 2008, to draw a valid inculcation against the persons concerned, who did not either join trial and/or, against whom no charge became initially drawn. However, in view of the expostulations of law carried in paragraphs 98, and, 99, paragraphs whereof, are extracted hereinafter, it became incumbent, upon the learned trial Judge concerned, to not only assess the qualitative worth, of the evidence comprised in the examination-in-chief of PW-1 one, Balwant Singh, but also to assess the qualitative worth of the exculpatory echoings, as, made in the inquiry reports, as, carried respectively in Annexure P-8, and in P-9, wherein, for the above reasons, inasmuch as, upon the examination of the call details, as emanating from the cell numbers, of the persons concerned, theirs being declared to be not present at the crime site, on the relevant date.

“98. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

99. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused

has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

7. However, the learned trial Judge concerned, has not assessed the qualitative worth of the call details concerned, and/or, of the CDR concerned, which rather constituted the relevant exculpatory material, for the investigating officer concerned, taking to exonerate the present petitioners. Only if the afore, had been done, would then, he would be construed to make an objective satisfaction, not only of the oral evidence but also of the exculpatory evidence (supra), as thereons, the plea of *alibi* became erected. Though, the above was amenable for being tested upon cross-examination being made, upon the investigating officer concerned, and, upon the expert report qua therewith as became adduced, rather becoming attempted to be ripped qua its efficacy, but yet at the relevant, yet irrespective of the above rather the learned trial Judge concerned, could also ask for the examination of the above exculpatory material, by the expert concerned, and, with the latter in his report not supporting the echoings carried in Annexures P-8, and, P-9, thereupon it would *prima-facie* beget a conclusion, that the persons concerned, were triable for the offences concerned, along with the appearing accused concerned. However, the learned trial Judge concerned, has only borne in mind the oral examination of PW-1, and, has not along therewith, construed the qualitative evidentiary worth of either the CDR or the call details emanating from the cell numbers of the accused concerned, nor has asked for their respective examination, from the expert concerned, especially when on anvil thereof, the present petitioners reared a plea of *alibi*.

8. If the expert who examined the above exculpatory material, had

made a report, against the petitioners, thereupon, reiteratedly the petitioners herein were amenable to be tried along with the appearing accused, otherwise may be not.

9. At this stage, the learned counsel appearing for the aggrieved-complainant has drawn the attention of this court to paragraph 7, carried in the verdict made by the Hon'ble Apex Court, in case titled as 'Sartaj Singh V. State of Haryana and another', to which Criminal Appeals No.298-299 of 2021 is assigned, paragraph whereof is extracted hereinafter, and, he builds an argument, that since thereins the inquiry, if any, as made by the police officer concerned, cannot prevail over, and, assume preponderance over the inculpatory statement carried in the examination-in-chief of the prosecution witness concerned, therefore the echoings in Annexures P-8, and, P-8 are unmeritworthy.

“7. Applying the law laid down by this Court in the aforesaid decisions to the case of the accused on hand, we are of the opinion that learned Trial Court was justified in summoning the private respondents herein to face the trial as accused on the basis of the deposition of the appellant – injured eye witness. As held by this Court in the aforesaid decisions, the accused can be summoned on the basis of even examination-in-chief of the witness and the Court need not wait till his cross-examination. If on the basis of the examination-in-chief of the witness the Court is satisfied that there is a prima facie case against the proposed accused, the Court may in exercise of powers under Section 319 CrPC, 1973 array such a person as accused and summon him to face the trial. At this stage, it is required to be noted that right from the beginning the appellant herein – injured eye witness, who was the first informant, disclosed the names of private respondents herein and specifically named them in the FIR. But on the basis of some enquiry by the DSP they were not charge-sheeted. What

will be the evidentiary value of the enquiry report submitted by the DSP is another question. It is not that the investigating officer did not find the case against the private respondents herein and therefore they were not charge-sheeted. In any case, in the examination-in-chief of the appellant-injured eye witness, the names of the private respondents herein are disclosed. It might be that whatever is stated in the examination-in-chief is the same which was stated in the FIR. The same is bound to be there and ultimately the appellant herein – injured eye witness is the first informant and he is bound to again state what was stated in the FIR, otherwise he would be accused of contradictions in the FIR and the statement before the Court. Therefore, as such, the learned Trial Court was justified in directing to issue summons against the private respondents herein to face the trial.”

10. However, the afore made submission is not completely supported by the above extracted paragraph 7 of verdict (supra), as the inquiry made by the Superintendent of Police concerned, hence exonerating the litigant therein, was not conclusively concluded by the Hon'ble Apex Court, to be completely irrelevant. It appears, that the above echoing carried in the verdict (supra), as, made by the Hon'ble Apex Court, was pointedly made only with respect to the factual matrix prevailing therein, and, unless therein the plea of *alibi*, as is raised by the petitioners herein, was also raised therein, on anvil of electronic evidence, and, it also became dispelled. Consequently, the acceptance by the Hon'ble Apex Court in verdict (supra), of the inculcation made by the PW concerned, in his examination-in-chief against the litigant therein, was also to be revered by this Court. However, in judgment (supra), the exoneration, if any, made in the inquiry, if any, conducted during the course of investigation qua the FIR thereins, is not made, with respect to assessment of any electronic evidence nor is made in respect of any plea of *alibi* being raised thereins,

whereas, herein rather upon the exculpatory electronic evidence, becomes the anchor, and/or, thereons a plea of *alibi* is erected by the petitioners. Therefore, the above *inter-se* distinctivity *inter-se* facts, herein, and, the facts in verdict (supra), does constrain this Court, to conclude, that this Court is yet constrained to ensure the determination qua the veracity of the electronic evidence, as is depended upon, by the petitioners herein to erect the plea of *alibi*.

11. For ensuring that the ends of justice are secured, this Court deems it fit to interfere with the impugned order, but with a rider that the lis, is to be remanded to the learned trial Judge concerned, to enable him to, after ensuring, that the above exculpatory electronic evidence, becomes examined by an expert outside Punjab, to receive an opinion in respect of veracity thereof, and, thereafter to accordingly proceed to draw a fresh order, in accordance with law, upon the public prosecutor's application, cast under Section 319 Cr.P.C. In case the expert, dispels the authenticity of the afore electronic evidence, thereupon the learned trial Judge concerned, may recommend the drawings of appropriate action, in accordance with law, against the concerned. All above be ensured to be completed within three months hereafter.

12. Disposed of accordingly.

13. Pending miscellaneous application(s), if any, stand(s), disposed of.

14. This order is only for the disposal of the petition, and, shall have no bearings on the merits of the case.

(SURESHWAR THAKUR)
JUDGE

09.05.2022

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ITHLESH KUMAR	Whether speaking/reasoned:-	Yes/No
2022.05.13 12:56	Whether reportable:	Yes/No
I attest to the accuracy and authenticity of this order		