

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-664-2023

Date of Decision: 16.03.2023

Budh Parkash Singh @ Budh Parkash & Ors.

... Petitioners

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. KS Sidhu, Advocate for the petitioners

Sandeep Moudgil, J.

Challenge in the present criminal revision is to the order dated 20.02.2023 vide which charges under Sections 302/307/341/323/34 IPC and Sections 25/27 of Arms Act have been framed against the petitioners.

Brief facts of the case are that FIR No.44 dated 14.04.2021 was registered under Sections 302/307/341/323/148/149 IPC and Sections 25/27 of Arms Act was registered at Police Station Guruharsahai, District Ferozepur on the statement of Nirmal Singh. In the said FIR, the complainant named total 9 persons as an accused in which 6 are the petitioners in the present petition and 3 others are Gurdev Singh (expired on 09.06.2022 while in judicial custody), Sukhwinder Singh and Jaswinder Singh. In the enquiry (Annexure P2) conducted on the application made by some of the accused person – the petitioners, the police authorities found the petitioners to be innocent and as such they were kept in Column No.2 of challan under Section 173(2) CrPC. Petitioners No.3 & 4 were even discharged on 02.08.2021 on the application moved by the prosecution agency and thereafter offences under Sections 148/149 IPC were deleted and Section 34 IPC was added. The petitioners were summoned under Section 319 CrPC vide order dated

23.09.2022 and vide impugned order dated 20.02.2023, charges were framed against the petitioners.

Learned counsel for the petitioners submitted that the petitioners have been wrongly charged and summoned by the trial court inasmuch they were exonerated by the police authorities vide report (Annexure P2). The petitioners are closely related to complainant Nirmal Singh and as such have been falsely implicated by the complainant only on account of the fact that earlier 5 FIRs were registered against the complainant by Gurdev Singh (since expired) and the wife of petitioner No.5, Paramjeet Kaur. It is an admitted fact that there is a family dispute going on inter se parties from long time pertaining to 7 kanals of land and the petitioners have no connection in regard thereto.

It is further contended that from a bare reading of the summoning order dated 23.09.2022 (Annexure P-4) and impugned order dated 20.02.2023 would go on to show that the order passed by Trial Court for summoning and charging the present petitioners is passed in a mechanical fashion as no speaking order regarding role of the petitioners has been passed nor any cogent evidence/material against the petitioners have been discussed while passing the said order.

Learned counsel further averred that the present petitioners have no role whatsoever. The presence of the complainant is also questionable as the FIR as well as in the examination in chief before the trial court, he has stated that he was going behind his brother Mohinder Singh and Nephew Gurcharan Singh on motorcycle splendor, whereas right after the incident, complainant in a bite (interview) given to web channel namely Rangla TV,

where he has stated that he was informed by his nephew Gurcharan Singh regarding above stated incident over the phone call and moreover, he further go on to state that he reached at the spot within 5 minutes after an alleged incident. Therefore, presence of above stated complainant namely Nirmal Singh on the spot is doubtful as is evident from true Video CD showing the abovesaid contents stated by complainant Nirmal Singh in an interview given to Rangla TV right after an alleged incident (Annexure P-5).

Further, learned counsel contended that a bare reading of FIR (Annexure P-1) would go on to show that different-different roles have been attributed to the present petitioners by the complainant, whereas postmortem of deceased Mohinder Singh would go on to show that cause of death in this case is hemorrhage and shock consequent upon firearm injury to abdomen and chest, which is sufficient to cause death in ordinary course of nature. Multiple metallic projectiles and a plastic was recovered from the body duly sealed in a plastic Jar with one seal duly initialed and handed over to the police. Further no other injury is present on the body of the deceased except injury No.1. There was a letter written by doctors of Civil Hospital, Ferozepur to Superintendent GGSMCH, Faridkot that they are not able to identify the directions of the fire arm wound or whether it is a fire arm injury or not. The nature of injury was mentioned as subject to X-rays and ballistic analysis.

It is vehemently urged that there is contradiction in the statement of complainant Nirmal Singh where he has alleged that petitioner No.6 namely Gurvinder Singh fired a shot from pistol in the chest of injured nephew Gurcharan Singh, whereas, injured Gurcharan Singh recorded his

statement under Section 161 Cr.P.C. that one of the co-accused who is behind bars namely Sukhwinder Singh had fired a shot towards him which hit on his left side of his chest.

It is further averred that the trial court did not appreciate the important aspect that the police authorities have given clean chit and as such the petitioners were declared innocent vide report (Annexure P2). Reliance has been placed on the judgments of the Hon'ble Supreme Court rendered in **Brijendra Singh & Ors. vs. State of Rajasthan 2017(3) RCR (Crl.) 374;** **Shishupal Singh vs. State of Uttar Pradesh (2019) 8 SCC 682, Sarabjit Singh & Anr. Vs. State of Punjab & Anr., (2009) 16 SCC 46,** to contend that the trial judge cannot summon the accused persons on the basis of examination in chief of complainant and his witness and a person should be summoned only when court finds that evidence on record is such which would reasonably lead to conviction of person sought to be summoned.

Learned counsel further placed heavy reliance on **Hardeep Singh vs. State of Punjab, 2008(4) RCR (Crl.) 947** to contend that the Court has to see whether there is *prima facie* case against the accused and if, from the evidence collected/produced in the course of any enquiry into or trial of offence, the Court is satisfied that such person has committed any offence, it can proceed under Section 319 CrPC, at any stage, before the final conclusion of the trial and that need not to wait till the cross-examination of the accused for the purpose of summoning.

It has been submitted that while framing charges, a Judge is not to act as a post office and has to consider the entire material on record to *prima facie* see as to whether offence under [Section 307](#) of the IPC is made

out or not. It is argued that the impugned order does not reflect application of mind and thus, deserves to be set aside. He has further argued that there is no injury which has been inflicted on a vital part of the body in the present case, which would also show that offence under [Section 302/307/341/323/34](#) of the IPC in the present case is not made out.

Heard learned counsel for the petitioners and gone through the case file.

The power under Section 319 CrPC is discretionary power of the trial court, therefore, the discretion exercised by the trial court cannot be lightly interfered with, unless it is shown that the order refusing to implead the persons as accused has been made mechanically or it is arbitrary or perverse. The trial court, while refusing to take cognizance against the accused, is bound to take into account every aspect of the matter and the entire material placed before it and more particularly their chances of conviction of those persons who have been sought to be summoned as accused.

The issue relating to the power to be exercised under Section 319 of CrPC came up for consideration before a Constitutional Bench of the Hon'ble Supreme Court in **Hardeep Singh vs. State of Punjab (2014) 3 SCC 92** wherein the scope, procedure and at what stage, such power can be exercised was considered in detail. It was held that Section 319 CrPC springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC. It further held that it is the duty of the court

to do justice by punishing the real culprit. Where the investigating agency, for any reason, does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC? The Constitutional Bench, while concurring with the views taken in **Dharam Pal Vs. State of Haryana reported in (2014) 3 SCC 306**, held that:-

“A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under [Section 319](#) Code of Criminal Procedure provided from the evidence, it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned, the requirement of [Sections 300](#) and [398](#) Code of Criminal Procedure has to be complied with before he can be summoned afresh.”

The Hon’ble Supreme Court further held that :-

“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](#) Code of Criminal Procedure In [Section 319](#) Code of Criminal Procedure 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 Code of Criminal Procedure](#) to form any opinion as to the guilt of the accused."

(emphasis applied)

In **Babubhai Bhimabhai Bokhiria & Another Vs. State of Gujarat & Others., AIR 2014 SC 2228**, the Hon'ble Supreme Court held 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 proposed accused, then he cannot be summoned under section 319 CrPC. Moreover, when the allegations against the person are general in character, he cannot be summoned under Section 319 Cr.P.C to face trial.

Coming to the facts of this case, the trial court found that present FIR was registered on the statement of Nirmal Singh son of Ranjit Singh, who got recorded his statement on 14.04.2021 with the police that on the day of occurrence, deceased Mohinder Singh and injured Gurcharan Singh were going on a motor cycle and complainant was following them and then suddenly, he saw that three motor cycles passed by him, out of which one motor cycle was being driven by Gurdev Singh, who has now died and Sukhwinder Singh son of Gurdev Singh armed with pistol and Jaswinder Singh son of Gurdev Singh armed with .12 bore double barrel gun were sitting on the pillion seat and other motor cycle was being driven by Satnam Singh son of Santa Singh and on pillion seat, Gurwinder Singh son of Satnam

Singh armed with country made pistol and Paramjit Singh son of Bagicha Singh armed with kapa were sitting and on third motor cycle, Budh Parkash son of Gurbaksh Singh was driving and Manjit Singh son of Gurbaksh Singh armed with baseball and Bagicha Singh son of Santa Singh armed with gandsi were sitting on the pillion seat. When, all of them reached near Mohinder Singh and Gurcharan Singh, then Gurdev Singh raised lalkara that they should not be spared, then Sukhwinder Singh fired from his pistol in the air and Gurcharan Singh tried to speed up the motor cycle, then Gurdev Singh again raised lalkara to directly fire at the deceased and the injured. Then Jaswinder Singh fired from his .12 bore double barrel gun towards Mohinder Singh, which hit Mohinder Singh from back side and then Gurwinder Singh shot a fire from his pistol, which hit on the left side of the chest of Gurcharan Singh and when complainant came forward to save both of them, then accused Bagicha Singh, Budh Parkash, Manjit Singh and Paramjit Singh stopped him and caused injuries on his person. Thereafter on raising raula, all accused persons ran away from the spot.

It has come on record that the prosecution has specifically argued that there are specific roles attributed to each and every person sought to be summoned, because complainant when appeared in the witness box has specifically stated so. The complainant has attributed Satnam Singh being driver of the motor cycle, on which he had taken other accused to the place of occurrence, whereas all other persons, who have been sought to be summoned as additional accused have taken active participation while firing gun shots and causing injuries to injured and deceased. In this case, there are specific attributions to each and every person sought to be summoned as

additional accused and even medical record shows that there are corresponding injuries on the person of deceased and injured Gurcharan Singh. The case laws cited on behalf of the petitioners are distinguishable on facts and hence have no applicability on the facts and circumstances of the present case inasmuch as, it is well settled that ample power to disagree with the police and summon the persons named in column No.2 on the basis of material in police report. This view of mine finds support from the decision of the Supreme Court in **Dharam Pal & Ors.** case (supra).

In view of the above discussion and the citations referred to above, this Court is of the considered view that there is no infirmity, perversity and illegality which calls for interference in the order dated 20.02.2023 passed by the trial court and as such the present petition, is dismissed.

16.03.2023

V.Vishal

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

(Sandeep Moudgil)
Judge

Yes/No
Yes/No