

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

246

CRR-1755 of 2017 (O&M)
Date of Decision: 11.12.2023

Pritam Singh

...Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Keshav Pratap Singh, Advocate, for the petitioner.
Ms. Sheenu Sura, DAG, Haryana.
Mr. Deepak Girotra, Advocate, for respondent No. 4.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition against the impugned order dated 03.01.2017 passed by the Court of Additional Sessions Judge, Rewari, whereby, the application filed by the petitioner under Section 319 Cr.P.C. was ordered to be dismissed. As per the case of the prosecution, the FIR (Annexure P-1) in the present case was got registered by the petitioner/complainant against Kuldeep Singh and Madan Singh, who is already facing the trial and respondents No. 2 to 8. The said FIR is reproduced below:-

"DD No.24. Name of the Informant ASI Jitender Kumar on returning had got the statement recorded on 23.8.2014 at 9.00 PM. At that time I ASI along with companions, am present at Aditya Hospital, Bawal

Rewari, for investigation case No.213 dated 23.8.2014 under section 323, 324, 307, 506 and 34 IPC, Police Station, Bawal. During investigation Fateh Singh son of Hari Singh, Yudhvir Singh son of Fateh Singh, caste Rajput, resident of Rawla Mohalla, Bawal were arrested and have been kept in the lockup. The information regarding the arrest has been given to Rajbir son of Saitan Singh. The farad of the case was handed over to MHC, police station and one written complaint given by Pritam Singh has also been brought by me which is as under: Statement of Pritam Singh son of Fateh Singh, caste Rajput, resident of Mohalla Moti Jhil, Bawal, aged about 31 years. Stated that I am resident of above stated address and I am working at Hamful Engineering Company, Delhi. We are four brothers. The eldest one is Partap Singh followed by Mahipal Singh, Yudhvir Singh and I am the youngest one. Yudhvir drives a Tempo. On 22/23.8.2014 at night at about 12.00/12.15 AM he came with his Tempo. Kuldeep and 2-3 of his friends had already parked a car, Bolero in the street, they were dancing by playing loud music. My brother Yudhvir told them to move the car from there, then they abused him and did not move the car and Kuldeep fired from his

licenced pistol and called the vehicle of his friends from Chirhara. In which 7-8 persons came and another car whose no.HR-99-1921 on which Shakti Chauhan was return came there, the number of the other vehicle was HR-36-3903, brother of Kuldeep, Hardeep also came there. Neeraj and Jitu sons of Biru, Madan, Jitu, Biru, Jagdish, Gopal son of Parbhu were also there. Kuldeep gave a Farsi blow on my back. I along with my brother Mahipal also came there and Satish one of their relative also came there. Hardeep and Santi Raj gave danda blows on my body, which hit my finger of the left hand, left foot, left shoulder and left knee and persons from Chirhara gave danda blows to Mahipal on his body, which hit his left hand, left elbow, left foot and both shoulder and Hardeep gave a Farsi blow to Mahipal on his head. Kuldeep gave rod blows to my brother Yudhvair on his forehead and shoulders and gave danda blows to my father on his feet and knee and his hands, the injuries were given by Kuldeep and Hardeep and his 4-5 friends. My nephew Kishan Singh son of Partap Singh was given injuries with a danda on his right knee. Jitu son of Biru and Satish have also caused injuries. In order to protect us we also gave injuries to them, they broke the

windshield of the Tempo and have caused loss to us. Shakti Chauhan had also fired. I have got recorded my statement in front of Mahipal, Yudhvir and my father Fateh Singh. Legal action be taken against the aforesaid persons. Statement got recorded to you, which is heard to be correct. They have given threats to us that they will kill us.

3. After the registration of the FIR in the present case, the investigation was conducted by the police and respondents No. 2 to 8 were placed in Coloumn No. 2. After the trial commenced before the trial Court, the petitioner/complainant was examined as PW1 and after his examination, the application under Section 319 Cr.P.C. was moved. However, vide the impugned order the prayer made by the petitioner/complainant was declined by the trial Court. Challenging the said impugned order, the petitioner has filed the present petition.

4. Learned counsel for the petitioner contended that in the present case only Kuldeep and Madan Singh were challaned whereas respondent No. 2 to 8 were kept in the coloumn No. 2 illegally. Even, the said accused had also played vital role in the commission of the crime and without mentioning any specific or reasonable ground, the police wrongly exonerated them of all the charge. Even, the trial Court committed the grave error as all the respondents No. 2 to 8 had actively participated in the commission of the crime and specific roles

were assigned to all of them. Even, the trial court had completely misappreciated the evidence on record. On 02.05.2023, a Co-ordinate Bench of this Court heard the matter at considerable length and thereafter, the following order was passed:-

“Arguments have been heard to some extent.

State of Haryana is directed to file a specific affidavit of a competent officer indicating the basis on which the persons who, though named in the FIR were found to be innocent during the investigation.

Learned counsel has read out the final report in the Court as per which some persons were found to have been present in some different village, which according to learned counsel for the petitioner was not far off from the place of occurrence and their presence at the place of occurrence could not have been ruled out because of the nearness of the place at which they were found to be present by the Investigating Agency.

The Investigating Agency would, therefore, also specify as to what was the distance of the places at which these persons were found to be present at the time of the incident, from the place of the incident.

List on 12.05.2023.

Interim order to continue”.

5. In compliance of the said order, a status report by way of affidavit of the Deputy Superintendent of Police, Bawal, was filed and the same has been taken on record.

6. As per the said report, it was found that involvement of Shakti Chauhan, Satish, Jaswant @ Jeetu, Neeraj, Rinku Hardeep,

Gopal Singh, Jagdish and Mahender Singh was not found involved in the occurrence. Consequently, their names were kept in Column No. 12 in the final report under Section 173 Cr.P.C. Only Kuldeep Singh and Madan Singh were challenged for the commission of the offence punishable under Sections 285, 323, 325, 427, 506 and 34 IPC. Learned State counsel submitted that Satish, Jaswant @ Jeetu, Neeraj, Rinku @ Hardeep, Gopal Singh, Jagdish and Mahender Singh were named as assailants, however, the complicity of the said persons was not found in the investigation and on the verification conducted by the SHO Police Station Bawal. Even a detailed case diary assigning the specific reasons for recording the conclusions was written. During the course of investigation, it was found that Satish respondent No. 7 was cousin of Kuldeep Singh son of Madan Singh and was residing separately from Kuldeep Singh. When he reached at the place of the occurrence, the fight had already been initiated and he shifted his uncle Mahender Singh injured to Jeevan Hospital in his Alto car. Still further Gopal Singh was found guarding the ATM of Oriental Bank of Commerce situated at Sir Chotu Ram Chowk, Bawal and this fact was duly established from the grabs of CCTV footage at the time of occurrence. Still further, Jagdish, respondent No. 6 was an aged person and at the time of the incident, he was present in his fields, which is at a distance of 3 kms from the place of occurrence. Even, the tower location of mobile of Shakti Chauhan showed that he was

at a different place. Even during the course of investigation, the statements of neighbours of Mahender Singh @ Biru respondent No. 3 were recorded and they stated that a party was organized in his house in the evening on 22/23.08.2004, wherein, Shakti Chauhan, Neeraj, Jitender @ Jeetu and Rinku had come around 07.00 p.m. and stayed at his house till 12.00 a.m. They received a phone call regarding the fight and they went back in a Dezire car. Even, and Rinku @ Hardeep, Jaswant @ Jeetu and Neeraj respondents No. 2, 4 and 5 were also not found at the place of occurrence and their presence was found at village Kheri Dalu Singh, which is at a distance of 8 to 10 Kms from Bawal. Even, from the case file, call detail records, statements of the witnesses and their affidavits, the presence of the private respondents was not found at the place of the occurrence and it was found that they had not participated in the occurrence. Apart from that Mahender Singh son of Sampat remained admitted in Aditya Hospital Rewari for two months and his limbs were not functioning. He was found at the place of occurrence empty handed and was rescuing his nephew Kuldeep Singh from the accused and did not inflict any injury to anyone. Rather in the process, he suffered serious injuries on his person.

7. I have heard learned counsel for the parties and perused the record.

8. In fact, this Court as well as Hon'ble Supreme Court of India have held in catena of judgements that 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 cannot be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing the offence. Only, where strong and cogent evidence occurs against a person from the evidence led before that Court, than such power should be exercised. The Courts should not exercise such powers in a casual and cavalier manner. It also requires much stronger evidence than mere probability of the complicity of an accused. In the present case, the trial Court has rightly held that on the basis of the solitary statement of Pritam, petitioner/complainant, which was not even tested on the touchstone of his cross-examination by the defence, the acceptance of the application under Section 319 Cr.P.C. was fraught with danger of embroiling the additional accused in facing the agony of trial. Apart from that, the statement of Pritam, petitioner/complainant had already been tested during the course of investigation. Even a detailed report has been submitted before the Court, indicating the reasons as to why the respondents No. 2 to 8, who are sought to be summoned were not found complicit in the crime and were ordered to be exonerated on

investigation by the police and also on verification by the higher police officers.

9. The Hon'ble Supreme Court of India has held in the matter of Juhru and others Vs. Karim and another (2023) 5 Supreme Court Cases 406 as under:-

“16. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 CrPC is not to be exercised routinely and the existence of more than a prima facie case is sine qua non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 CrPC, and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 CrPC ought not to be invoked”.

10. There is no merit in the present petition and the same is ordered to be dismissed.

11. All pending applications, if any, are disposed off, accordingly.

11.12.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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