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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1814-2017 (O&M)

Date of decision: 25.09.2023

Chattar Singh

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr.Abhimanyu, Advocate for petitioner.

Mr.Karan Sharma, DAG, Punjab.

None for respondents no.2 to 8.

ARUN MONGA, J. (ORAL)

Present petition has been filed challenging the order dated 10.11.2016, passed by the learned Additional Sessions Judge, Mewat, in case bearing CIS No.SC/135/2015 and 163/2015 vide which petitioner's application filed under Section 319 of the Cr.P.C. has been partly allowed, by summoning Chainpal and Balbir Singh only, and dismissing *qua* other accused-respondents no.2 to 8 herein.

2. Learned counsel for the petitioner submits that an FIR No.378 of 06.06.2013 under section 148, 149, 323, 325, 307 and 506 of IPC was got registered by the present petitioner/complainant in which he has levelled serious allegations against the accused persons/respondents no.2 to 8 and in the FIR the complainant/petitioner has specifically stated that so many accused persons in collusion with each other in order to cause serious and multiple injuries to the petitioner had attacked him.

3. He further submits that challan was presented by the Investigation officer, there were certain accused persons who were not named in the challan and were placed in coloumn no.2 of the challan under section 173 of Cr.P.C. and when trial began in the above stated FIR then the complainant/petitioner filed the application under Section 319

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Cr.P.C. (Annexure P-1) for summoning Ajit, Mukesh, Avinash, Chainpal, Birju, Kailash, Ravi, Amit, and Balbir as an additional accused persons.

4. Learned trial Court without appreciating the facts and circumstances of present case and without considering the important and vital fact that the complainant/petitioner has specifically named the accused persons in the FIR version as well as in the 161 Cr.P.C. statement which is already on record, partly allowed application (Annexure P-1) and summoned Chainpal and Balbir only as an additional accused persons to face the trial in the above stated FIR and has left the other co-accused persons/respondents no.2 to 8 despite their role and involvement in the above stated FIR is concerned.

Hence the present petition.

5. *Per contra* learned State counsel opposes the prayer made and submits that order impugned herein passed by the trial Court has rightly been passed by summoning the main culprit only and not summoning respondents no.2 to 8, and the order does not suffer from any infirmity.

6. I have heard learned counsel for the petitioner and perused the case file.

7. Impugned order dated 10.11.2016 is, *inter alia*, premise on the following reasoning:-

"6. A perusal of the FIR shows that the complainant had attributed an injury on his left arm with lathi to Chainpal, an injury on his head with farsa to Balbir Singh. He had also stated that Ajit and Mukesh had inflicted fist and leg blows to his sons Rajesh, Deepak hit Uday Singh with a lathi on his right eye, Mukesh hit lathi to Uday Singh, Ramu hit a lathi to Hazari, Deepak hit a lathi to Kisha. In the second incident, he stated that Mahipal had hit a lathi on his head and other persons had also beaten his family members. When he appeared in the witness box, he had reiterated the version stated in the FIR. A perusal of the FIR as well as statement of complainant shows that specific injury has been attributed to Balbir and Chaipal and those injuries are also corroborated by the medical evidence in the shape of MLRs of the complainant/injured. As regards the other persons named above, the allegations against them are general and vague allegations. The allegations against Mukesh and Ajit are that they had given kick blows to the son of complainant namely Rajesh. Ajit is stated to be government employee and it appears that his name was mentioned just to create pressure on the accused persons. The remaining persons stated above were found innocent during investigation and there is no

reason to dispute the investigation conducted by the investigating officer.

7. The Hon'ble Supreme Court of India in case titled as **Hardeep Singh Vs. State of Punjab & Ors., 2014 (1) (Criminal) 623** has laid down the law on the point of summoning of accused under Section 319 of the Code of criminal Procedure, 1973. In Para No.98 and 99 of the aforesaid judgment, Hon'ble Supreme Court of India has observed as under:-

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.

8. The ratio of the law laid down in the aforesaid authority is that power under Section 319 Cr.P.C. is discretionary as well as extra-ordinary, which is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It has not to be exercised merely because that some other person may also be guilty of committing that offence. It is only where the strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. The test has to be applied is one which is more than prima facie case as exercised at the time of framing of charge.

9. In case titled as **Nachattar Singh Vs. State of Punjab & Ors., 2015 (1) Law Herald 758 (P&H)**, the Hon'ble Punjab and Haryana High Court has held as under:-

"Held, admittedly, power under Section 319 Criminal Procedure Code is an extraordinary power to be exercised very sparingly and only if compelling circumstances and reasons are there for taking cognizance against other persons who are sought to be summoned-In the present case also, neither any fresh evidence has come in the statement of complainant nor any compelling reasons are there to summon said two persons as the statement of

complainant is merely a reiteration of earlier statement made before the police authorities and in the investigation, the same has been considered and these persons were found to be innocent."

10. In view of above discussion and above reported cases, application under Section 319 Cr.P.C. moved by applicant-complainant is allowed partly qua Chainpal and Balbir and both these persons are ordered to be summoned as additional accused in the present case and application qua remaining persons is hereby dismissed."

8. Perusal of the aforesaid shows that the impugned order is based on cogent reasoning after appreciating the evidence on record in right perspective and does not suffer from any infirmity and perversity much less illegality. I am inclined to agree with the conclusions drawn and view taken by learned trial Court. Thus, no grounds for interference are made out.

9. In the aforesaid premise, the petition is dismissed.

10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

25.09.2023
'D'vir

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