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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-39277, 39278,
39279-2023 In/And
CRR-4234-2017 (O&M)
Date of Decision:04.10.2023

Gurbachan Singh

...Petitioner

Vs.

State of Punjab and Others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Arihant Jain, Advocate
for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

Mr. Chetan Bansal, Advocate
for respondents No.2 and 3.

Mr. Sukhwinder Singh Kamboj, Advocate
for the applicant/respondent No.4 in
CRM-39277,39278,39279-2023.

N.S.Shekhawat J.

CRM-39277,39278, 39279-2023

1. Learned counsel for the applicant/respondent No.4 wishes to withdraw abovesaid applications, with liberty to avail his alternative remedies, in accordance with law.

2. Dismissed as withdrawn, with aforesaid liberty.

Main case

1. The petitioner has filed the present revision petition against the impugned order dated 19.08.2017, passed by the Court of Additional Sessions Judge, Patiala, whereby the application under Section 319 Cr.P.C filed by the present petitioner was ordered to be dismissed.

2. The FIR in the present case was registered on the statement made

by Gurbachan Singh @ Bhola, who alleged that at about 08:30 AM on 04.05.2015, he went to Guga Mari Mandir and after paying obeisance, when he came out Dinesh Kumar @ Minta, respondent No.3 exhorted the other accused and told them not to leave him alive. Kaka Singh, Tea Vendor, Jaswinder Singh @ Billu, Randhir Singh, Mintu and other unidentified persons were also standing there. Kaka Singh, Tea Vendor, Jaswinder Singh @ Billu, Randhir and Mintu had surrounded him and started beating him. Davinder Singh @ Kaka, gave a blow with spade on the left hand and another blow on the elbow of his right arm, on this, the petitioner fell down. Davinder Singh @ Kaka Chawla gave multiple blows of spade on different parts of the body and the remaining accused had also caused injuries to him. After this, Jaswinder Singh @ Billu took out his licensed revolver of 32 Bore which was lying under the driver seat of his car and fired in the air. Jaswinder Singh @ Billu fired two shots towards the building of Guga Mari Temple and also fired two shots in the air. All the accused fled away from the spot along with the revolver. Dinesh Kumar @ Minta said that he had expired now and thereupon all the accused fled away from the spot along with the revolver. All the accused had conspired with Priya Krishan and Dinesh Kumar @ Minta and had caused injuries to the petitioner. Priya Krishan and Dinesh Kumar @ Minta, respondents No.2 and 3 are real brothers. With these allegations the FIR in the present case was got registered by the petitioner.

3. Learned counsel for the petitioner contended that the application under Section 319 Cr.P.C had been wrongly dismissed by the Trial Court. Learned Trial Court had mainly placed reliance on the investigation conducted by the police and the respondents No.2 and 3 were wrongly exonerated. Even

the police had not assigned any specific reasons for declaring the respondents No.2 and 3 to be innocent. However, the petitioner appeared as PW-1 before the Trial Court and had assigned specific roles of respondents No.2 and 3 and other remaining accused as well. In fact, the respondents No.2 and 3 and other accused had created a trust to grab the land of the temple measuring 07 acres and the complainant and other residents of the village got the trust dissolved. Due to the said enmity, the injuries were caused by respondents No.2 and 3 and other accused to the present petitioner and the respondents No.2 and 3 were also liable to be summoned by this Court.

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

5. Before proceeding further, it would be apposite to refer to the provisions of Section 319 Cr.P.C. The same are reproduced hereinbelow:-

“319.Cr.P.C -Power to proceed against other persons appearing to be guilty of offence.-

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-

section (1), then-

- (a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;*
- (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”*

6. The Hon’ble Supreme Court of India has dealt with the issue in hand in a number of judgments and two of the most celebrated judgements in this regard are discussed hereinbelow:-

In “***Michael Machado and another versus Central Bureau of Investigation and another, 2000 (3) SCC 262***”, the Hon’ble Supreme Court of India held as under:-

“11. The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.

12. But even then, what is conferred on the court is only a discretion as could be discerned from the words the court may proceed against such person. The discretionary power so conferred should be exercised only to achieve criminal justice. It is

not that the court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons”.

The Hon’ble Supreme Court in ‘**Manjeet Singh versus State of Haryana & others, 2021(4) RCR (Criminal) 25**’, held as under:-

“13. The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under section 319 Cr.P.C, 1973 can be summarized as under:

- (i) That while exercising the powers under section 319 Cr.P.C, 1973 and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;*
- (ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;*
- (iii) the law has been properly codified and modified by the legislature under the CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;*
- (iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;*
- (v) 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;*
- (vi) section 319 Cr.P.C, 1973 allows the court to proceed against any person who is not an accused in a case before it;*

(vii) the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency;

(viii) section 319 Cr.P.C, 1973 is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;

(ix) the power under section 319(1) CrPC, 1973 can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208CrPC, committal, etc. which is only a pretrial stage intended to put the process into motion;

(x) the court can exercise the power under section 319 Cr.P.C, 1973 only after the trial proceeds and commences with the recording of the evidence;

(xi) the word "evidence" in section 319 Cr.P.C 1973 means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;

(xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under section 319 Cr.P.C, 1973 is to be exercised and not on the basis of material collected during the investigation;

(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under section 319 Cr.P.C, 1973 and can proceed against such other person(s);

(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers

under section 319 Cr.P.C, 1973 can be exercised;

(xv) that power under section 319 Cr.P.C, 1973 can be exercised even at the stage of completion of examination-in-chief and the court need not has to wait till the said evidence is tested on cross-examination;

(xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of section 319 Cr.P.C, 1973 and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);

(xvii) while exercising the powers under section 319 Cr.P.C, 1973 the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial”.

7. A perusal of Section 319 Cr.P.C. as also the judgment in **Michael Machado case's (supra) and Manjeet Singh's case (supra)** would clearly show that the Court has wide powers to summon a person as an additional accused, who has been exonerated by the Investigating Agency, if it finds that there is sufficient evidence available against the said person in order to try him along with the accused already facing trial. However, there is no compelling duty to summon an accused. The discretionary power so conferred should only be exercised to achieve justice and must be based on the quality of evidence collected. In fact, the Court being the sole repository of justice, there is a duty

cast upon it to uphold the law and ensure that the real accused should not get away by manipulating the Investigating Agency/Prosecuting Agency. What the Court needs to examine while adjudicating upon an application under Section 319 Cr.P.C. is that there should be evidence available on the file in the shape of oral evidence or documentary evidence in order to invoke its powers to summon an additional accused under Section 319 Cr.P.C.

8. In the present case also, the police had conducted detailed investigation in the matter and even the investigation was conducted by Superintendent of Police, Patiala as well. During the course of investigation, the statements of several witnesses were recorded and on the basis of the detailed investigation conducted by the police, respondents No.2 and 3 were kept in column No.2 and were exonerated by the police. However, during the course of trial, only PW-1 Gurbachan Singh @ Bhola had appeared as a witness and simply reiterated the initial version. Except the statement of PW-1 Gurbachan Singh @ Bhola the prosecution did not lead any evidence to prove the involvement of the respondents No.2 and 3 in the commission of the crime. Simply because PW-1 Gurbachan Singh @ Bhola had named both the respondents in his statement, it can never serve as a ground for summoning the said accused under Section 319 Cr.P.C. The Trial Court had made the following observations, while declining the prayer made by the present petitioner:-

“Now, complainant- Gurbachan Singh @ Bhola while appearing as PW-1 has reiterated his version as mentioned in the statement made to the police. In the opinion of this Court, when Priya Krishan and Dinesh Kumar @ Minta have been exonerated by the police on the basis of the enquiry on the application filed by the complainant himself and even the police also cancelled cross

version, the said Priya Krishan and Dinesh Kumar @ Minta cannot be summoned merely on the basis of the statement made by the complainant. The Court has to exercise the power under Section 319 Cr.P.C only if, the Court feels satisfied that there are sufficient grounds for summoning of the additional accused. In each and every case, the said power cannot be exercised merely on the basis of the statement by the complainant. Otherwise, the evidence collected by the Investigating Agency would of no value at all. The complainant is likely to reiterate his version at the time of making of statement before the Court. When it is made out that accused Priya Krishan and Dinesh Kumar @ Minta were exonerated by the police on the basis of the statements made by the witnesses produced by both the sides, it would not be in the interest of justice to summon them as additional accused merely on the basis of the statement made by the complainant. However, in case at any subsequent stage, the evidence showing the complicity of said persons in this case comes on record, the Court can summon them. At this stage, no ground for summoning them, is made out and accordingly, the instant application is dismissed.

9. Even otherwise, I have gone through the impugned order passed by the Trial Court and find no material irregularity, illegality or perversity in the impugned order.

10. Consequently, the present revision petition filed by the present petitioner is ordered to be dismissed.

11. All other pending application(s), if any, are also disposed off, accordingly.

(N.S.SHEKHAWAT)
JUDGE

04.10.2023
hitesh

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