

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201

1.

CRR-2874-2018 (O&M)

Chander Singh

.... Petitioner

Versus

State of Haryana and others

.... Respondents

2.

CRR-2288-2019 (O&M)

Chander Singh

.... Petitioner

Versus

State of Haryana and others

.... Respondents

Date of decision:08.02.2023

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Rajesh Lamba, Advocate
for the petitioner(s) (in both cases).

Mr. Munish Sharma, AAG, Haryana.

Mr. Kartik, Advocate for
Mr. Baljit Beniwal, Advocate
for respondents No. 2, 3 and 5 to 7.

ASHOK KUMAR VERMA, J. (ORAL)

By this common order, two aforementioned criminal revisions are being disposed of, arising out of the same impugned order dated 09.08.2018, passed by the learned Additional Sessions Judge, Palwal whereby the application under Section 319 Cr.P.C. filed by the petitioner through learned Public Prosecutor for summoning the private respondents as additional accused was dismissed. For brevity, the facts are being extracted from CRR-2874-2018.

The brief facts of the case are that petitioner-Chander Singh,

had made a complaint to the police alleging therein that on 27.08.2017 at around 7:30/8:00PM, he was present at the Bus Stand, Dhatir and on the other side of the road, his son Jagat Singh was present in a Scorpio vehicle. In the meantime, some miscreants came on two vehicles and three motor cycles. The assailants in connivance with each other fired shots upon his son Jagat Singh, as a result of which he died at the spot. Thereafter, the assailants fled away from the spot in their respective vehicles. During investigation, the police declared respondent Nos. 2 to 7 (in CRR-2874-2018) and respondents No. 2 and 3 (in CRR-2288-2019) as innocent. Thereafter, the petitioner moved an application under Section 319 Cr.P.C. for summoning the aforesaid private respondents as an additional accused which was dismissed by the learned Additional Sessions Judge, Palwal, vide order impugned herein. Hence the present revision.

Learned counsel for the petitioner, *inter alia*, contends that the petitioner in his statements before the police as well as the trial Court, had specifically named respondent Nos. 2 to 7 (in CRR-2874-2018) and respondents No. 2 and 3 (in CRR-2288-2019) to be part of an unlawful assembly, which had caused death of his son-Jagat Singh and that they had actively participated in the occurrence, however, the trial Court wrongly drew a conclusion that the statements of the complainant before the police as well as the trial Court had not fulfilled the requirement of exercise of extraordinary powers conferred on the Court. Learned counsel has further contended that the trial Court while passing the impugned order did not appreciate the matter in its right perspective and,

therefore, the same is liable to be set aside and the application under Section 319 Cr.P.C. deserves to be allowed. In support of his contentions, learned counsel for the petitioner has relied upon a judgment of this Court in *Arshida vs. State of Haryana and others, 2014(1) RCR (Criminal)*.

On the other hand, learned counsel for the private respondents vehemently opposed the submissions of learned counsel for the petitioner. Learned counsel has further contended that the provisions enshrined under Section 319 Cr.P.C. are special in nature and the same seek to meet an extraordinary situation and the Court must form an opinion on the basis of evidence brought before it to find out as to whether a case is made out against the persons sought to be summoned and to be tried together with the accused already in trial.

I have heard learned counsel for the parties and carefully gone through the record.

As per prosecution version, on 27.08.2017 at around 7:30/8:00PM, son of the petitioner, namely, Jagat Singh, was shot dead by some miscreants who came in two vehicles and three motor cycles. Thereafter, the assailants fled away from the spot in their respective vehicles. In the FIR the petitioner specifically named the private respondents, (i) Mahesh, (ii) Naresh @ Nivla, (iii) Om Parkash (iv) Krishan (v) Tinku (vi) Mukesh all residents of Dhatir and (vi) Gajender @ Gajju resident of Naya Gaon, Palwal, for causing death of his son in common object of unlawful assembly while armed with deadly weapons. During investigation conducted by the DSP, Palwal they were declared

innocent. The petitioner while appearing in the witness box as PW-5 has specifically stated about the involvement of the aforesaid accused persons for commission of the offence.

Hon'ble the Apex Court in the case of ***Brijendra Singh and others Versus State of Rajasthan, Criminal Appeal No.763 of 2017, decided on 27.04.2017***, while allowing the appeal and setting aside the order summoning the appellants under Section 319 Cr.P.C. held in para 15 as under:-

“15. This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the 'evidence' recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the

said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.”

Applying the test in the present case, no further evidence than what was available during investigation and was relied upon by the Investigating Agency, has been brought to the notice of this Court nor there was any before the trial Court. Only when a strong and cogent evidence is led against a person, that such power under Section 319 Cr.P.C. can be exercised. It is not to be exercised in a casual manner. The discretion granted under Section 319 Cr.P.C. has to be exercised very sparingly and with caution and only when the court is satisfied that some offence has been committed by such person. No doubt, the complainant had specifically named respondent Nos. 2 to 7 (in CRR-2874-2018) and respondents No. 2 and 3 (in CRR-2288-2019) in the FIR and his presence cannot be doubted. However, the petitioner has not attributed any specific role to respondents Nos. 2 to 7 (in CRR-2874-2018) and respondents No. 2 and 3 (in CRR-2288-2019). Merely because the private respondents had been named in the FIR and in the statement recorded by the complainant before the trial court, would not be a ground to invoke the powers under Section 319 Cr.P.C. What is required is that the material, which is brought before the Court, must be of such a nature as would satisfy the Court that it would reasonably lead to conviction of the person sought to be summoned. The trial Court has rightly held that there is no justification to exercise the powers under Section 319 Cr.P.C.

As a result of above discussion, no fault can be found with

the impugned order dated 09.08.2018 passed by the learned Addl. Sessions Judge, Palwal, dismissing the application under Section 319 Cr.P.C. filed by the petitioner, for summoning respondents Nos. 2 to 7 (in CRR-2874-2018) and respondents No. 2 and 3 (in CRR-2288-2019) as additional accused. Accordingly, the impugned order dated 09.08.2018 is upheld and both the revision petitions are dismissed.

08.02.2023
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No