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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1536-2023 (O&M)

Date of Decision: 12.09.2023

Gurjeet Kaur

....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Himani Anand, Advocate, for the petitioner.

JASGURPREET SINGH PURI, J. (Oral)

CRM-27067-2023

The present application has been filed for condonation of delay of 41 days in filing the present revision petition.

For the reasons recorded in the application, the same is allowed. The delay of 41 days in filing the present revision petition is hereby condoned.

Main case

1. The present is a revision filed challenging the impugned order dated 22.02.2023 passed by the learned Additional Sessions Judge, Karnal whereby the application which was moved by the prosecution under Section 319 Cr.P.C to summon respondents No. 2 to 7 as additional accused to face trial alongwith other co-accused namely Gurmail Singh @ Meli has been dismissed.

2. The brief facts of the present case are that a complaint was filed

by the petitioner on the basis of which the FIR was lodged vide Annexure P-1. As per the allegations in the FIR, it was stated by the petitioner that on 15.10.2019 near their dera Gurmail Singh @ Meli son of Gurmeeta alongwith their companion Deepa and Vikram were going to harvest paddy on combine and the driver of the combine slid the wheels of his combine to our paddy field. Her husband namely Gernail Singh was also present at the spot, so he complained to the driver of the combine for spoiling their paddy. Thereafter, Gurmail Singh @ Meli and Jaspal who were marching alongwith the combine started hurling abuses at her husband and an altercation started with them. The driver of the combine Deepa and the other boy namely Vikram also got down from the combine. Thereafter, Gurmail Singh took out an iron rod from the combine and hit her husband with the iron rod on his head and Jaspal Singh hit her husband on his eye with a danda. Deepa and Vikram were also standing with rod and screw driver in their hand. The complainant and her son Harpal Singh reached the spot and after a while the other persons namely, Nirmal Singh, Karnail Singh and Sukhwinder Singh came to the spot and also started hurling abuses at them. The husband of the petitioner fell on the ground and his head was bleeding profusely. Thereafter he was referred to the Government Hospital and was admitted there and ultimately the aforesaid Gernail Singh had died.

3. During the course of investigation the police presented charge-sheet against the aforesaid Gurmail Singh @ Meli and found the other persons who are respondents No.2 to 7 as innocent and exonerated them. Thereafter, the complainant deposed before the Court as prosecution witness and after her examination-in-chief the prosecution moved an application under Section 319 of the Code of Criminal Procedure for

summoning of respondents No.2 to 7 as additional accused. The learned Additional Sessions Judge, Karnal vide impugned order dated 22.02.2023 dismissed the application which is impugned in the present revision petition.

4. Learned counsel appearing on behalf of the petitioner has argued that the learned Additional Sessions Judge, Karnal has erroneously dismissed the application under Section 319 Cr.P.C because respondents No.2 to 7 who were earlier nominated as accused in the FIR were wrongly exonerated by the police since roles are attributable to respondents No.2 to 7 as well and they were also present on the spot. She referred to the contents of the FIR to state that role of one of the respondents i.e respondent No.4 namely Jaspal was also specifically mentioned in the FIR to the effect that he had hit the husband of the petitioner on his eye with danda. She submitted that although the main role has been attributable to the co-accused Gurmail Singh @ Meli against whom charge-sheet has been presented but the other accused who are respondents No.2 to 7 and are sought to be summoned as additional accused were also participants and therefore, they ought to have been summoned by the learned trial Court.

5. I have heard the learned counsel for the petitioner.

6. The challenge in the present petition is to order passed by the Additional Sessions Judge, Karnal dated 22.02.2023 whereby the application under Section 319 of the Code of Criminal Procedure has been dismissed. In the aforesaid application, respondents No.2 to 7 were sought to be summoned as additional accused. In this regard the contents of the FIR needs to be noticed. The FIR was lodged on the basis of statement made by the petitioner herself whereby she had stated at the first instance that one Gurmail Singh against whom charge-sheet has been presented and is facing

trial took out an iron rod from the combine and hit her husband with the iron rod on his head and Jaspal Singh/respondent No.4 hit her husband on his eye with a danda. So far as respondents No.2 and 3 namely, Deepa and Vikram are concerned, the allegations were that Deepa and Vikram were also standing with iron rod and screw driver in their hand but no overt act has been attributable to them. So far as respondents No. 5 to 7 namely, Nirmal Singh, Karnail Singh and Sukhwinder Singh are concerned, as per the FIR it has been so stated by the petitioner herself that when she alongwith her son reached the spot then after a while which means after some time, respondents No.5 to 7 came on the spot and started hurling abuses at them. The relevant portion of the aforesaid FIR is reproduced as under:-

“Today on 15.10.2019 near our dera Gurmail Singh @ Meli son of Gurmeeta R/o Churni Jagir along with his combine, driver and companion Deepa S/o Puppa Ram, Vikram S/o Leelu both resident of Churni, were going to harvest paddy when the driver of the combine slid the wheels of his combine on to our paddy field. My husband Gernail Singh was also present at the spot, so he complained to the driver of the combine for spoiling our paddy, then Gurmail Singh @ Meli and Jaspal S/o Gurmeet Singh who were marching along with the combine started hurling abuses at my husband and started having an altercation with him. The driver of the combine, Deepa and the other boy Vikram also got down from the combine. Gurmail Singh took out an iron rod from the combine and hit my husband with the iron rod on his head and Jaspal Singh hit my husband on his eye with a danda. Deepa and Vikram were also standing with rod and screw driver in their hand. Me and my son Harpal Singh reach the spot and after a while Nirmal Singh, Karnail Singh, Sukhwinder Singh came on the spot and also started hurling abuses at us”.

7.

Thereafter the petitioner deposed as a prosecution witness after

the commencement of the trial and also reiterated her version as was stated in the FIR. The learned trial Court while considering the application under Section 319 of the Code of Criminal Procedure discussed in detail the allegations pertaining to the present respondents No.2 to 7 who are sought to be summoned as additional accused. So far as the respondent No.4 namely Jaspal Singh is concerned, the allegation qua him was that he had given a danda blow on the right eye of the deceased but the learned trial Court also discussed the medical of the deceased wherein it reflected three injuries on his person which were (i) a lacerated wound of the size of approximately 10 cm x 2 cm on the head (ii) swelling (iii) blackening on eyelid of right eye and bleeding inside the nose. The doctor namely Dr. Rohit Goyal was also examined as PW-1 who had explained during cross-examination that injuries No.2 and 3 on the person of the deceased were result of injury No.1 on the head of the injured and thus it demonstrates that the injured had received a single blow only. Even otherwise also there is no injury on the deceased by any blunt weapon and there is only one injury on the head which is otherwise attributable to the other accused namely Gurmail Singh who has been so charge-sheeted. So far as the other respondents are concerned, there was no overt act attributable to them at all. So far as respondents No. 2 and 3 namely, Deepa and Vikram are concerned, the only allegations were that they were standing with rod and screw driver in their hand and so far as respondents No. 5 to 7 namely, Nirmal Singh, Karnail Singh and Sukhwinder Singh are concerned, they had come after a while i.e. after the incident and started hurling abuses at the complainant and her son. The statement of Harpal Singh son of complainant was also considered which was although made before the police but he had so stated that an altercation

took place between his father who is the deceased and Gurmail Singh and Gurmail Singh took out an iron rod from the combine and hit on the head of his father and caused injuries on his head, eye and nose and in this way, the aforesaid Harpal Singh also did not attribute any role to the persons sought to be summoned as additional accused. The learned trial Court also referred to the statement of Surender Singh, the real brother of deceased Jarnail Singh who corroborated the version of the aforesaid Harpal Singh and did not even whisper about the proposed accused in his statement as stated above although given to the police. Learned trial Court heavily relied upon the statement of Dr. Rohit Goyal, PW-1 who testified in the cross-examination that injury No.2 and 3 were result of injury No.1 and injury No.1 was on the head which was attributable to the aforesaid Gurmail Singh only.

8. Learned trial Court further placed reliance upon the judgment of Constitutional Bench of Hon'ble Supreme Court in ***Hardeep Singh Versus State of Punjab and others, 2014 (3) SCC 92*** and came to the conclusion that it is not a case where more than prima facie case is made out for the purpose of summoning of the respondents No. 2 to 7 as additional accused since there was no sufficient material in this regard. A perusal of the FIR, statement of the petitioner as PW-4 and statement of Dr. Rohit Goyal as PW-1 pertaining to the injuries, this Court is of the view that no illegality and perversity can be found in the impugned order passed by the learned Additional Sessions Judge, Karnal. It is a settled law that for the purpose of summoning of a person as an additional accused in an application under Section 319 Cr.P.C, the same should be done with due care and caution and it cannot be done in a routine manner and the standard of proof is much

higher in its degree. It was so held by the Constitutional Bench of Hon'ble Supreme Court in *Hardeep Singh Versus State of Punjab and others* (*Supra*) and the relevant portion is reproduced as under:-

“105. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary 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.

106. 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”.

9. In the facts and circumstances of the present case, the petitioner has not been able to show any more than *prima facie* case or any sufficient material to connect respondents No. 2 to 7 with the offence. Consequently, finding no perversity or illegality in the impugned order, this revision

petition is devoid of any merit and the same is hereby dismissed.

12.09.2023

(JASGURPREET SINGH PURI)
JUDGE

rakesh

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