

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-1591-2021 (O&M)
Date of Decision: 02.06.2023

DINESH KUMAR

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ashish Aggarwal, Senior Advocate assisted by
Ms. Aashna Aggarwal, Advocate
and Mr. Mukul Aggarwal, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

Mr. Vipin Mahajan, Advocate
for respondents No.2 to 4.

HARSH BUNGER, J.

Petitioner has filed the present criminal revision petition for seeking setting aside of order dated 05.07.2021 passed by the Court of learned Sessions Judge, Tarn Taran, whereby an application filed by him under Section 193 of the Code of Criminal Procedure (in short "***Cr.P.C.***") for summoning respondents no. 2 to 4 herein, in case FIR bearing No.173 dated 11.10.2020 registered under Sections 302, 506, 148, 149, 120-B of the Indian Penal Code and Sections 25 and 27 of Arms Act, 1959, at Police Station Sadar Bhikhiwind, District Tarn Taran (Annexure P-6); has been dismissed.

2. Succinctly, the above-mentioned FIR was registered on the statement of complainant (Dinesh Kumar son of Paramjit Kumar), resident of Khalra Mandi, Police Station Khalra, District Tarn Taran, who stated that on 11.10.2020 at about 06:00/07:00 p.m., he alongwith Mandeep Kumar

alias Monu son of Paramjit Kumar (brother-in-law of complainant) was sitting on the petrol pump (Raj Kumar Brothers Petrol Pump, Khem Karan Road). Paramjit Singh son of Tirath Ram, brother of the father-in-law of complainant and one Deepak Kumar son of Vijay Kumar (employee of petrol pump), were also sitting on the petrol pump at that time, when Satwinder Singh (mentioned as Satinder Passi in the FIR) armed with .315 bore rifle, Gurpreet Singh alias Gopi armed with pistol, Charanjit Singh armed with 12 bore rifle, Harbhajan Singh son of Banta Singh armed with 12 bore rifle, Surjit Singh son of Harbhajan Singh armed with datar alongwith 15-20 unidentified armed persons came at the passage adjoining the petrol pump, regarding which there was a dispute between the parties. It is stated that when complainant, alongwith Mandeep Kumar alias Monu, moved forward then Gurpreet Singh alias Gopi fired a direct shot from his pistol at Mandeep alias Monu which hit in his right flank and Mandeep alias Monu fell down. Gurpreet Singh alias Gopi, alongwith assailants fled away from the spot with their respective weapons while firing shots and giving threats. Complainant alongwith Deepak Kumar arranged for a vehicle and took Mandeep alias Monu to Vijay Dhawan Nursing Home Hospital, Bhikhwind, where Mandeep alias Monu was declared dead. As per the FIR, the motive behind the occurrence was alleged to be a dispute with respect to passage adjoining the petrol pump, which leads to the colony, wherein 16 feet area belongs to the complainant, but the accused party claimed the same to be theirs. The said dispute led to the murder of Mandeep alias Monu, who was the brother-in-law (*sala*) of the present petitioner.

3. In the abovesaid case FIR No. 173, Gurpreet Singh @ Gopi is stated to have been arrested by police but no action was taken against the

other accused. It is stated that on 11.10.2020, Senior Superintendent of Police, Tarn Taran issued a letter/Memo No. 1609 (Annexure P-7) directing SHO Bhikhiwind to immediately arrest the accused persons and another supervisory note (Annexure P-8) was issued by Deputy Superintendent of Police, Sub Division Valtoha, directing arrest of accused persons; however, no headway was made. Accordingly, on 13.10.2020, petitioner is stated to have submitted a representation before Deputy Superintendent of Police, Bhikhiwind. It is further stated on 15.10.2020, Senior Superintendent of Police, Bhikhiwind issued another direction (Annexure P-10) to Superintendent of Police (Traffic) to conduct investigation in the above-said FIR No. 173 and thereafter on 17.11.2020, SSP, Tarn Taran constituted a Special Investigating Team (SIT) to conduct investigation in this case, however no progress is stated to have been made.

4. Thereafter, it appears that the petitioner alongwith another filed Criminal Writ Petition No. 9722 of 2020, which was disposed of vide order dated 25.11.2020 (Annexure P-11) with a direction to SSP, Tarn Taran to decide the representation of the petitioner.

5. The above-said SIT is stated to have submitted its report vide Memo dated 25.01.2021 (Annexure P-12) wherein presentation of challan was proposed against one accused only namely Gurpreet Singh @ Gopi and a clean chit was given to Surjit Singh @ Vicky (respondent No. 2), Jasbir Singh (respondent No. 3) and Charanjit Singh (respondent No. 4) herein, on the basis of examination of CCTV footage of the cameras installed at their home / shop.

6. It appears that said report of SIT was accepted by Senior Superintendent of Police, Tarn Taran and final report / challan dated

05.02.2021 (Annexure P-13) was presented by the police against Gurpreet Singh @ Gopi only.

7. Thereafter, the petitioner filed an application under Section 193 of Cr.P.C. before the trial Court for summoning respondents No. 2 to 4 herein, which has been dismissed by the trial Court vide impugned order dated 05.07.2021. Accordingly, the present Criminal Revision Petition has been filed before this Court.

8. Learned counsel for the petitioner submits that the trial court has failed to appreciate that respondents no. 2 to 4 have been given a clean chit on the basis of some CCTV footage which allegedly shows that the said persons were present somewhere else at the time of occurrence. It is submitted that the said CCTV footage is forged and fabricated and the same could not have been relied upon without ascertaining the authenticity of the said CCTV footage by sending it to FSL Lab. He submits that out of six persons, three persons (Surjit Singh @ Vicky, Jasbir Singh and Charanjit Singh) were found innocent during investigation/inquiry. It is next submitted that the impugned order dated 05.07.2021 passed by the trial Court is illegal, which has caused grave injustice to the petitioner. Accordingly, prayer has been made for allowing the criminal revision petition by setting aside the impugned order dated 05.07.2021 and consequently allowing the application under section 193 of Cr.P.C. filed by the petitioner and summoning respondents No. 2 to 4 herein to face trial.

9. Per contra, learned State counsel as well as the counsel for respondents no. 2 to 4 has opposed the prayer of the petitioner by supporting the impugned order dated 05.07.2021 by submitting that the order dated

05.07.2021 has been passed in accordance with law and no interference is required in the same by this Court.

10. Learned counsel for respondents No. 2 to 4 has further submitted that initially respondent no. 3 was not even named in the FIR and it was only after 30 days of the alleged occurrence that the complainant got a second supplementary statement recorded on 11.11.2020 wherein he introduced the name of respondent No.3 by saying that one of the unknown person was Jasbir Singh son of Banta Singh, who allegedly raised *lalkara*. It is submitted that the complainant very well recognizes Jasbir Singh as he is also a party in the pending civil suit, thus it is a case of false implication. It is further submitted that the SIT collected the CCTV footage and Call Details Records (CDRs) to arrive at the conclusion that respondent No. 2 to 4 were not present at the place of occurrence. It is stated that respondent no. 2 (Surjit Singh) was present at his shop (Passi Clothes House), respondent no. 3 (Jasbir Singh) was present at his house in Joshi Colony, Amritsar and respondent no. 4 (Charanjit Singh) was present at Gurudwara Bhai Taru Singh Ji. It is contended that the SIT had collected scientific data and the report of SIT was also accepted by SSP Tarn Taran and respondents no. 2 to 4 were declared innocent. It is next contended that the petitioner had hurriedly filed the application under section 193 Cr.P.C. without leading any further evidence and petitioner should have waited for the stage of Section 319 Cr.P.C. It is submitted that there is no infirmity, illegality or perversity in the order dated 05.07.2021 passed by trial Court whereby application under section 193 of Cr.P.C. for summoning respondents No. 2 to 4 herein, has been dismissed. Accordingly, prayer for dismissal of the Criminal Revision Petition has been made.

11. I have heard learned counsel for the rival parties and perused the paper-book as well as impugned order dated 05.07.2021.

12. Before considering the case in hand, it would be apposite to refer to section 193 Cr.P.C., which speaks of cognizance of offences by court of session and provides as follows:-

“193. Cognizance of offences by Courts of Session. -
Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.”

A close reading of Section 193 Cr.P.C. would manifest that the power of the court of Sessions to take cognizance in this section would commence only after committal of the case by a Magistrate. Further, the said provision starts with a non-obstante clause ***“except as otherwise expressly provided by this code or by any other law for the time being in force”***. The section is thus clarified by the said opening words which clearly means that if there is any other provision under Cr.P.C., expressly making a provision for exercise of powers by the court to take cognizance at that very stage, then the same would apply and the provisions of Section 193 Cr.P.C. would not be applicable. Therefore, under this section 193 Cr.P.C., the Sessions court can apply its mind after committal of the case till the time of framing of charge only. Moreover, if the Court comes to the conclusion from the materials available on record transmitted to it that in fact an offence is made out even against those persons who have not been committed for trial, then only it has power to proceed against the persons who have not been committed for trial by the Magistrate because till then the trial has not commenced. At the stage of trial, only the provisions of Section 319 Cr.P.C.

can come into play for taking cognizance against those persons who have not been committed for trial but their complicity is established by the “evidence” adduced during the trial.

14. Coming to the case in hand, the learned Sessions Judge, Tarn Taran, while considering the application under Section 193 Cr.P.C. filed by the petitioner, summoned the case file along with the inquiry report with the requisite CCTV footage and vide its order dated 05.07.2021, observed as under :-

“11. Thus, so far as the legal proposition governing 193 Cr.P.C. is concerned if upon the material on record, complicity of the persons, not named as offenders, is made out, the Court of Session assumes original jurisdiction and would be well within its right to summon the persons kept in column No.2, to stand trial alongwith persons already named therein.

*12. It would be trite at this stage to advert to Constitutional Bench decision of Hon’ble High Court in case **Hardeep Singh Vs. State of Punjab and another in Criminal Appeal No.1750 of 2008**, in which while dealing with the law laid down in the case of Dharampal (Supra) vis-à-vis Section 319 Cr.P.C. and the nature of material disclosing complicity of the person proposed to be summoned for the commission of offence, it has been observed that the material coming before the Court, in the shape of enquiry can be used and that where an accused, named in the FIR, is kept in column No.2 of the challan report, on the basis of scientific enquiry/enquiries conducted by Investigating Agency, the said enquiries would indeed be handy for the purpose of adjudicating upon the application under Section 319 Cr.P.C.*

13. The said proposition of scientific enquiry conducted by the Investigation Agency, being handy for the purpose of adjudicating upon the complicity of a person to be

summoned, can well be imported for the purpose of deciding complicity of a person at the very threshold i.e. at the time of taking cognizance by the Court of Session after the commitment of the case.

14. *In the present case, as has been noted above, a detailed enquiry was conducted by the SIT. During the course of enquiry, the SIT relied upon CDRs and CCTV footage of various places to arrive at the conclusion that Surjit Singh alias Vicky, Jasbir Singh and Charanjit Singh were present at different places and not the place of occurrence at the time of the occurrence. As per the enquiry report, the occurrence took place when the complainant side opened quarrel with accused Satinder Singh etc. with respect to passage and the parties entered into altercation during which turban of Satinder Singh fell down and the son of Satinder Singh namely Gurpreet Singh alias Gopi entered into scuffle with Mandeep Kumar and fired a shot at Mandeep Kumar who ran towards the petrol pump in injured condition and fell down.*

15. *No doubt, the enquiry report and the conclusion arrived at by the SIT is not binding upon the court. However, the court cannot lose sight of the fact that where there is positive material in the shape of CDRs and CCTV footage collected from various places showing accused Charanjit Singh, son of Satinder Singh, at Gurudwara Bhai Taru Singh Ji, accused Surjit Singh alias Vicky, son of Harbhajan Singh, at his shop Passi Cloth House and accused Jasbir Singh, son of Banta Singh, in his house in Joshi Colony, Amritsar, at the time of occurrence, the court has to tread cautiously and to be wary of issuing summons to those who are not arrayed as accused in the charge sheet.*

16. *From the perusal of the CDRs of the said accused, their still photographs and the video clips of the cameras installed at Gurudwara Bhai Taru Singh Ji village Pahula, Passi Cloth House and H.No.2, Joshi Colony, Amritsar,*

respectively, wherein accused Charanjit Singh, Surjit Singh and Jasbir Singh were present at the time of occurrence, no ground is found to take out cognizance against said three accused namely Charanjit Singh, Surjit Singh and Jasbir Singh.

*17. It may be added here that accused Charanjit Singh, Surjit Singh and Jasbir Singh have been kept in column No.2 on the basis of scientific comprehensive enquiry conducted by Investigating Agency which enquiry is substantiated by existence of positive evidence establishing the persons of these accused at different places at the time of occurrence. The existence of CDRs, coupled with CCTV footage showing the presence of these three accused at places other than the place of occurrence at the time when the occurrence took place being in the nature of scientific data collected by the SIT, can not be brushed aside. The Hon'ble Kerala High Court in case **K.K. Jayacharan and others Vs. State of Kerala and others** Crl. Rev. Pet. No.17 of 2017 decided on **22.08.2019** has held that in the absence of strong materials indicating the involvement and complicity of others not sent up for trial, it would be unsafe and unjust to exercise the powers under Section 193 Cr.P.C., and to issue summons to such persons.*

18. Thus, to sum up, in the light of the fact that accused Jasbir Singh was not named in the FIR and neither the presence of Jasbir Singh nor of the other two accused Charanjit Singh and Surjit Singh is found on the place of occurrence, by the Investigating agency itself, no ground is made out to issue summons to Charanjit Singh, Surjit Singh and Jasbir Singh by invoking Section 193 Cr.P.C. Accordingly, application under Section 193 Cr.P.C. filed by prosecution urging the court to take cognizance against accused Surjit Singh, Jasbir Singh and Charanjit Singh and summoning them stands dismissed.”

16. The perusal of the aforesaid findings returned by the learned Sessions Judge, Tarn Taran would manifest that the same are based upon proper appreciation of the material available on the file. In no way, the impugned order can be held as perverse or against the evidence and law. The Petitioner has miserably failed to show any error of law or on facts on the basis of which interference can be made by this Court in exercise of its revisional jurisdiction.

17. At this stage, learned senior counsel appearing for the petitioner has submitted that the CCTV footage could not have been relied upon by the Court below for want of certificate under Section 65B of the Evidence Act. However, I do not find any merit in the said submission, inasmuch as that the issue concerning requirement of Certificate under Section 65B of the Evidence Act was considered by the Hon'ble Apex Court in *Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal and others 2020(7) SCC 1*, wherein it was held that Section 65B does not speak of the stage at which such certificate must be furnished to the Court. It was further held that so long as the hearing in a trial is not over, the requisite certificate can be directed to be produced by the learned Judge at any stage.

18. No other argument was raised.

19. In view of the above discussion, the instant criminal revision petition is bereft of any merit and the same is accordingly dismissed.

20. All pending application/s, if any, shall stand closed.

June 2nd, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No