

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

224

CRR 1916 of 2022 (O&M)
Date of Decision: 11.12.2023

Gurdev Singh

...Petitioner

Versus

State of Haryana and another

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. S.K.Aggarwal, Advocate, for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

Mr. Ivneet Singh Pabla, Advocate
for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition against the impugned order dated 16.08.2022 passed by the Court of Additional Sessions Judge, Kurukshetra, whereby, the application under Section 319 Cr.P.C. filed by the present petitioner was ordered to be dismissed.

2. In the present case, FIR No. 111 dated 03.05.2016 was got registered by Preetpal Singh, respondent No. 2. The copy of the complaint in this regard has been reproduced below:-

“Statement of Preetpal Singh s/o Gurdayal Singh caste Saini Sikh r/o Kheri Dabdalan, Police Station Ladwa, District Kurukshetra aged 60 years. State that I am resident of above mentioned address and an agriculturist

and we are four brothers. The eldest is Narender Singh, younger to him is Rajpal Singh, then myself and the youngest is Harpal Singh. We are having joint land but we brothers have partitioned the joint land for cultivation purposes. Narender Singh was having the land on Badshami Radour road adjoining the road around 3 acres away. I had earlier requested my brother Narender that he should give my share in the land adjoining the road and whatever share he had in the land situated on the backside he should take. Today i.e. on 02-05-16 I sent information through village chowkidar Taj Ali to my brother Narender Singh in the fields to tell him not to cultivate land of his share and to talk about partition of the land by collecting people of the village on which Gurdev Singh, son of Narender Singh, who was cultivating the land told the chowkidar that he would continue cultivating the land as he was doing and tell them to do whatever they could. The chowkidar told that talk to me. Thereafter, I sent my son Charanjit Singh to Gurdev Singh in the fields and my son Charanjit Singh also repeated the same words which were uttered by the chowkidar. Thereafter, Charanjit Singh went to Police Station Ladwa to give an application and at around 5 pm after the electricity had come we released the water of the tube well in the disputed land and after half an hour Narender Singh, his son Gurdev Singh armed with arms came to our fields when I alongwith my sons Charanjit Singh and Sarvjit Singh was there. Narender Singh and his son Gurdev Singh came to us where we were giving water in our fields and got angry on seeing us giving water in the

disputed land and Narender Singh exhorted 3 of us that we would be taught a lesson for releasing water in the land. The Gurdev Singh with his licensed Revolver fired at my son Charanjit Singh with the intention to kill him and the bullet hit the left side neck of my son Charanjit Singh due to which Charanjit Singh fell on the ground. Thereafter, Gurdev Singh fired twice at Saravjit Singh, one bullet hit the chest of Saravjit Singh and the second hit on his left thigh due to which he too fell down. I raised alarm due to which Gurdev Singh while firing in the air fled away alongwith his father Narender Singh through the fields and while going he threatened us that they were saved that but if in future they were found, the entire family would be killed. Thereafter, I arranged a private vehicle and took both my injured sons to Government Hospital Ladwa from where the Doctor keeping in view the deteriorating condition of my sons referred them to Govt. Hospital Kurukshetra. I have admitted my sons in private hospital Signus in Kurukshetra and I have got recorded my statement to you which is correct and legal action be taken against them”.

3. Thereafter, Gurdev Singh, petitioner also got his cross version recorded with the same police station and the same has been reproduced as below:-

“Stated that I, Gurdev Singh s/o Narender Singh caste Saini Sikh, am resident of village Niwarsi Dera P.S. Ladwa District Kurukshetra. My father are four

brothers. The eldest is my father Narender Singh, Rajpal Singh is younger to him, then Pritpal Singh and the youngest is Harpal Singh. We and my uncles have some land in the area of Niwarsi and some land in Kheri Dabdalan. Our land is joint. And we have partitioned the land for the purposes of cultivation. We were having the land in our possession on the road going from Kheri Dabdalan to Radour Yamunanagar Road adjoining the road which was around 7½ acres in the area of Kheri Dabdalan. We were cultivating this land for the last 13 years. Yesterday dated 02.05.2016 we had cultivated the land for sowing Ganna Crop and my uncle Pritpal Singh was asking for his share in the fields adjoining Kheri Dabdalan Road and he wanted to give us the land situated on the back side, but we had refused for this partition and we were cultivating the lands on which we were in possession. And at around 5 pm I and my father Narender Singh went to your fields in Kheri Dabdalan and saw my uncle Pritpal Singh and his sons Charanjit Singh and Saravjit Singh giving water to our cultivated land from the tube well. Then I closed the naka from where the water was going in the filed, and it was turned to the vacant field and on this my uncle Pritpal Singh and his sons started abusing us and telling us that we

would take our share in this field only. We asked them not to abuse us, but they started fighting with us. Charanjit Singh by way of a Kassi held by him in his hand gave a blow thereof on the head of my father due to which my father fell down and became unconscious and then Saravjit Singh took Kassi from Charanjit Singh hit on my head and Pritpal Singh gave a stick blow on my back. Due to these injuries blood started coming from my head and the head of my father. We raised alarm, then these three persons did not leave us and in self defence I fired from my licensed Revolver due to which they have received injuries. These persons have caused injuries to us illegally legal action be taken against them”.

4. After the registration of the cross version by Gurdev Singh (petitioner), the investigation was conducted by the police. The petitioner had leveled allegations against Preetpal Singh and his two sons, namely, Charanjit Singh and Saravjit Singh. However, after investigation, the police only challaned Charanjit Singh and Saravjit Singh both sons of Preetpal Singh and whereas Preetpal Singh respondent No. 2 was found to be innocent. During the course of the trial, the statement of PW1 Gurdev Singh, petitioner was recorded and an application under Section 319 Cr.P.c. was moved for summoning

Preetpal Singh respondent No. 2. However, vide the impugned order, the said application was ordered to be dismissed.

5. Learned counsel for the petitioner contended that the impugned order was passed by the trial Court by clearly overlooking the mandatory provisions of Section 319 Cr.P.C. He further contended that the trial Court had ignored the fact that the respondent No. 2 was specifically named in the FIR and a role was assigned to him. While appearing as PW1, the petitioner had reiterated the said allegations. Even, the trial Court failed to appreciate that as per MLR dated 02.05.2016 of the petitioner, there was an abrasion on the lumber region, which corresponded to the stick blow caused by respondent No. 2. However, the police wrongly declared the respondent No. 2 as innocent by mentioning that he was not found present at the place of the occurrence and was rather found to be innocent. Learned counsel further submitted that the police had wrongly exonerated the respondent No. 2 and was liable to be summoned by this Court.

6. On the other hand, learned counsel for respondent No. 2 submitted that the petitioner had named the respondent No. 2 due to ongoing civil dispute between the parties. In fact, the complainant side, i.e., the petitioner had caused serious firearm injuries to Charanjit Singh and Saravjit Singh both sons of Preetpal Singh and the petitioner alongwith his other family members are facing the prosecution before the trial Court. The petitioner had wrongly named Preetpal Singh as one of the accused even though, Preetpal Singh had

reached the spot to separate the fighting groups and did not participate in the occurrence at all. However, the petitioner had wrongly assigned an injury with stick on his back and the said allegations were found to be false during the course of the investigation by the police. Now while appearing as PW1, the present petitioner simply reiterated the said stand and the application is liable to be dismissed by this Court.

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

8. From the record, it is apparent that the FIR (Annexure P-2) was got registered by respondent No.2. As per him, due to civil dispute between the parties, Narender Singh and Gurdev Singh, petitioners came to their fields and started firing shots at Charanjit Singh and Saravjit Singh. On this, the petitioner reached at the place of occurrence and raised noise to save them. However, Gurdev Singh, petitioner was firing in the air and fled from the spot. Even the petitioner caused firearm injuries to Charanjit Singh and Saravjit Singh and they were grossly injured.

9. The Hon'ble Supreme Court of India has held in the matter of **Juhru and others Vs. Karim and another (2023) 5**

Supreme Court Cases 406 as under:-

“16. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 CrPC is not to be exercised routinely and the existence of more than a prima facie case is sine qua

non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 CrPC, and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 CrPC ought not to be invoked”.

10. Applying the aforesaid principles to the case of the instant case, it is apparent that PW1 Gurdev petitioner, simply stated that the petitioner had caused blow with a stick on his back. As per the MLR of the petitioner, the petitioner had suffered an abrasion on the lumbar region. However, from the FIR, it is apparent that he had a fight with Charanjit Singh and Saravjit Singh, both the sons of respondent No. 2 and he had fired shots on both of them. Consequently, it is possible that the petitioner had suffered an abrasion in the said fight with both the sons of respondent No. 2. Still further, the said fact has been duly investigated by the police and

found that respondent No. 2 had not participated in the occurrence and had rather separated the fighting groups. At this stage, the prosecution had only examined PW1 Gurdev and there was no other evidence on record before the trial Court. Even, in the said statement, the petitioner had reiterated his version, as mentioned in the initial cross version recorded by the police. However, on investigation the said version was found to be false and the respondent No. 2 was declared as innocent. Even, the parties are closely related and were having civil dispute between them, consequently, there is every likelihood that the version put forth by the petitioner/complainant was exaggerated. Even otherwise, the law is well settled that the Courts should refrain from exercising powers under Section 319 Cr.P.C. as the said powers are discretionary and extra ordinary in nature. The trial court had rightly observed that no extra ordinary case was made out to exercise the discretionary power under Section 319 Cr.P.C. to summon the respondent No. 2 as an additional accused in the present case.

11. In view of the above discussion, finding no merits, the present revision petition is ordered to be dismissed.

12. All pending applications, if any, are disposed off, accordingly.

11.12.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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

