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

**CRR-2199-2022
Date of Decision: 24.08.2023**

Pyare Lal

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Shivam Grover, Advocate,
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present revision petition has been filed for challenging the impugned order dated 05.07.2022 passed by the learned Additional Sessions Judge, Sonipat whereby an application under Section 319 of the Code of Criminal Procedure for summoning respondent Nos.2 to 4 has been rejected.

2. An FIR No.61 dated 16.02.2021 under Sections 323, 302, 506, 325 & 34 IPC was lodged on the basis of a complaint made by the petitioner/complainant by stating that he alongwith Sham Lal, who is his grandson in relation, were taking care of the fields of Zamindar in Village Bhawad. On 14.02.2021 at about 10.30 PM when he alongwith the aforesaid Sham Lal were going to the fields and they reached near Bhambewa Canal, then they saw that Lila @ Sombir, his driver and two persons were

consuming liquor, who also made them consume liquor. There was exchange of words. Lila @ Sombir and his friends attacked on them with *Dandas* and also gave kicks to them. Due to the injuries, they were shifted to Khanpur PGI by their relative Anil and some of the villagers, from where the doctors referred them to PGIMS Rohtak. During the treatment, the aforesaid Sham Lal died at the PGIMS, Rohtak due to the injuries received in the quarrel. It was requested by the complainant that action be taken against Lila @ Sombir and his friends.

3. Learned counsel appearing on behalf of the petitioner submitted that the FIR was registered against Lila @ Sombir and three unknown persons and thereafter respondent Nos.2 & 3 were nominated during the course of investigation. However, during the course of investigation, another person, namely, Niranjana was also arrested on 23.02.2021 and when the challan was presented, the same was presented only qua the aforesaid Niranjana as the police found respondents No.2 to 4 as innocent. He further submitted that after the statement of Pyare Lal was recorded as PW1 that an application was filed under Section 319 Cr.P.C. for summoning respondents No.2 to 4 as additional accused. As per the examination-in-chief (Annexure P-2), the allegations contained in the FIR were reiterated and it was also stated that after giving complaint to the police on 16.02.2021 which bears his signatures, during the course of investigation he had also given supplementary statement to the police wherein he stated the names of all the accused involved in the incident, but only Niranjana has been challaned. He further submitted that the learned Additional Sessions Judge has dismissed the application under Section 319

Cr.P.C. erroneously. The application was dismissed on the ground that at this stage, there was no evidence against respondents No.2 to 4, who were sought to be summoned as additional accused and the police only found Niranjana to be involved in the offence. He further submitted that the petitioner himself is the eye witness to the incident and is also the complainant and at the first instance and immediately after the incident, on his complaint, the FIR was lodged in which he had named Lila @ Sombir alongwith other persons but the aforesaid Lila @ Sombir was wrongly exonerated by the police. Thereafter, even in the supplementary statement he had given the names of the remaining persons but only one person, namely, Niranjana was challaned. He also submitted that the challan qua the aforesaid Niranjana has been presented only on the basis of his own disclosure statement before the police. In the disclosure statement which was against him, the attribution was qua him only and not qua respondents No.2 to 4 and in fact, it was a case where the police implicated Niranjana only, but tried to save other accused, who are rather the main accused. The mother of the aforesaid Niranjana, namely, Murti wife of Sh. Ram Pal moved a petition before this Court under Section 482 of the Code of Criminal Procedure in CRM-M-23114 of 2021 on 31.05.2021 against the State of Haryana, Lila, Ashok and Mewa Singh (Sarpanch) by stating that her son was innocent and he was on duty on 14.02.2021, Lila @ Sombir and the other accused persons were also present in the R.O. Company and after finishing his work, her son went to sleep in his room in the aforesaid Company and in the morning of 15.02.2021, the Sarpanch of the Village Mewa Singh and other persons came to the petitioner's son, namely,

Niranjan, who was sleeping and took him to the nearby fields and later on the petitioner and her family members came to know that the police has falsely implicated and arrested Niranjan in the present case. He was even kept in illegal custody and beaten up by the police. However, the aforesaid petition was dismissed.

4. Learned counsel for the petitioner further submitted that there are more than *prima facie* reasons available on record to summon respondents No.2 to 4 as additional accused. One of the grounds on the basis of which the application was rejected, was that Lila @ Sombir (respondent No.2) and Ashok (respondent No.3) were subjected to polygraph test, which was got conducted from FSL, Madhuban (Karnal) after the orders of the Court and the result of the aforesaid Lie Detecting Test was that Lila @ Sombir and Ashok were truthful in their answers and thereafter they were exonerated by the police. He also submitted that scientific examination with regard to the polygraphic test can not be relied upon for exonerating the main accused as a threshold by the police themselves. He further submitted that the learned Addl. Sessions Judge also relied upon the prosecution in the police story that respondent No.4-Rajesh Malik, who was nominated as an accused, was not found present at the time of incident and similarly Lila @ Sombir was found to be alighting from his vehicle at about 11.00 PM on the same date. He also submitted that as per the FIR, the incident took place at around 10.30 PM and even if the aforesaid Lila @ Sombir was found to be at his house at 11.00 PM, still that would not become a ground to exonerate him at the investigation stage itself because half an hour is sufficient time to travel from the place of occurrence

to his own house. He further submitted that all the three accused (respondents No.2 to 4) have committed the offence and the petitioner is an eye witness to the same. He has so stated on oath also at the time of deposition and therefore, the aforesaid application was erroneously dismissed by the learned Addl. Sessions Judge vide order dated 05.07.2022 and the same is liable to be set aside.

5. On the other hand, Mr. Vishal Kashyap, learned DAG, Haryana has filed status report by way of an affidavit of Assistant Commissioner of Police, Gohana-I, Sonipat and submitted that the learned Addl. Sessions Judge has rightly dismissed the application under Section 319 Cr.P.C. because although, the allegations were levelled against Lila @ Sombir (respondent No.2) and some other unknown persons but during the investigation, the police found them to be innocent on the basis of evidence collected, which included the place where they were at the time of the incident as stated in the FIR and also on the basis of the polygraph test, which was conducted upon respondents No.2 & 3. He further submitted that for the purpose of summoning of an accused as additional accused under Section 319 Cr.P.C., there has to be more than *prima facie* evidence available on the record, which was absent in the present case and therefore, learned Addl. Sessions Judge has rightly dismissed the application.

6. I have heard the learned counsels for the parties.

7. It is a case where the petitioner himself is the complainant and has lodged an FIR by making specific allegations that he alongwith the deceased saw respondent No.2–Lila @ Sombir, his driver and two other persons consuming liquor and thereafter exchange of words took place and

respondent No.2-Lila @ Sombir and his friends attacked them with *Dandas* and also gave kicks to them which caused injuries to them and thereafter his relative Sham Lal died. The aforesaid allegations contained in the FIR were reiterated at the time of deposition by the complainant as PW1. In the examination-in-chief of the complainant, he specifically stated vide Annexure P-2 that when he alongwith Sham Lal had gone to the fields and reached near Bhambewa Canal then they saw that accused Niranjana, Lila @ Sombir (respondent No.2), Ashok (respondent No.3) and Rajesh (respondent No.3) were consuming liquor and all the above said persons offered liquor to them, which was consumed by them and after the quarrel started, they gave merciless beatings to him and Sham Lal with *Dandas*. Thereafter, the accused persons after causing injuries to them, dragged Sham Lal in the adjoining fields whereas the complainant was thrown on the road. They were taken to the hospital by their relatives and during treatment, Sham Lal died. The petitioner categorically stated in his statement that he had given the complaint (Ex.PW1) to the police on 16.02.2021 and later on, during the investigation he had also given a supplementary statement to the police wherein he has stated the names of all the accused involved in the incident, but only Niranjana was challaned and he identified the accused Niranjana.

8. The learned Addl. Sessions Judge, Sonapat while dismissing the application under Section 319 Cr.P.C. observed that the polygraph test was conducted upon respondents No.2 & 3 from where it was found that whatever they were stating, was truthful and so far as respondent No.4 is concerned, he was not present at the place of occurrence. In the reply filed

by the State, it has been so stated that the CCTV footage of the Camera installed at the house of respondent No.2-Lila @ Sombir was checked and he was found present at his house at the time of occurrence and that is why he was exonerated.

9. However, an additional status report was also filed by the Assistant Commissioner of Police dated 19.08.2023 wherein various clarifications have been made. The clarification pertaining to the CCTV footage of Lila @ Sombir's house as referred to in the earlier status report, it has been so stated that as per the CCTV footage dated 14.02.2021, Leela @ Sombir can be seen while alighting from Pick-up Vehicle at 10.59.50 PM and he enters his house and the Pen Drive of CCTV footage has also been attached as Annexure P-4. Therefore, so far as the presence of Lila @ Sombir at the place of occurrence is concerned, the difference of time has now been clarified by the respondent/State in the aforesaid second status report. The alleged occurrence had taken place at about 10.30 PM and therefore, the difference of time between the alleged occurrence and place where respondent No.2-Lila @ Sombir was seen, is about half an hour. It has been further so stated in the affidavit/status report that in the medico-legal report of Sham Lal, he was taken to BPS Government Medical College for Women, Khanpur on 15.02.2021 at 10.01 AM and the petitioner-complainant was taken to the said hospital at 10.03 AM by Anil and other co-villagers. Therefore, there is a gap of about half an hour between the alleged time of occurrence and the time when Lila @ Sombir-respondent No.2 reached his house. So far as respondent No.3-Ashok is concerned, he has been exonerated on the basis of polygraph test by the police and so far

as respondent No.4-Rajesh is concerned, he was exonerated by the police on the ground that he was not present at the spot. On the other hand, the complainant himself is the eye witness and also the injured and although, his statement before the Court as PW1, is a further elaboration of his initial FIR but there does not seem to be any contradiction between the same.

10. The Hon'ble Supreme Court in “Hardeep Singh Vs. State of Punjab and others”, 2014(3) SCC 92, has discussed the law with regard to the summoning of additional accused and the standard and degree of proof required in this regard. This Court is of the view that the observations made by the learned Addl. Sessions Judge that there is no evidence against the persons sought to be summoned as accused is erroneous in view of the fact that the entire facts and circumstances of the present case, especially the statement of the petitioner being an eye witness has been ignored. The police relied upon the disclosure statement of Niranjana but on the other hand, the mother of the aforesaid Niranjana had accused the police for falsely implicating him and picking him up from his house on the next day morning.

11. After hearing learned counsels for the parties and perusing the record available on the file, this Court is of the view that it is a fit case where the matter should be remanded back to the learned Addl. Sessions Judge/trial Court for passing a fresh order after considering the entire material available on record from both the sides. Consequently, the present petition is allowed. The order dated 05.07.2022 is hereby set aside. The learned Addl. Sessions Judge, Sonapat is directed to pass a fresh order on the application under Section 319 Cr.P.C. filed by the petitioner strictly in

accordance with the law and the law laid down by the Hon'ble Supreme Court in Hardeep Singh's case (supra).

12. Needless to say that the fresh order shall be passed after fresh application of mind and uninfluenced by the observations made in the present order and the earlier order passed by the learned Addl. Sessions Judge on 05.07.2022.

24.08.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |