

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRR-2217-2023 (O&M)
Date of decision: 03.10.2023

Rajwinder Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Inderjit Sharma, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner-complainant (hereinafter referred to as 'the complainant') is impugning the order dated 29.03.2023 passed by learned Additional Session Judge, Gurdaspur in Sessions Case No.SC-253-2018 CNR No.PBGD01-006772-02018 arising out of FIR No.0005 dated 20.01.2018 under Sections 307, 324, 323, 427, 379, 506, 148 and 149 of the IPC and Section 25 of the Arms Act, 1959 registered at Police Station Sekhwan, Police District Batala, District Gurdaspur, whereby an application filed by prosecution under Section 319 of the Cr.P.C. for summoning respondents No.2 to 4 to face trial as additional accused, was dismissed.

2. Learned counsel appearing for the complainant while drawing the attention of this Court to the allegations levelled in the FIR which has been annexed as Anneuxre P-1, submits that on the date of alleged occurrence, the complainant along with her husband Harjit Singh and son Akrambir Singh were returning home after meeting her brother Mithu Singh, who had been discharged from the hospital, where

he had been admitted, on account of the injuries inflicted upon him by co-accused Varinder Singh @ Rana Cheema and Harpreet Singh @ Happy (brothers of sister in law of the complainant). On their way back, at about 04:40 P.M., a car driven by accused Varinder Singh @ Rana Cheema came and stopped besides the car of the complainant; co-accused Kashmir Singh was seated in that car along with respondents No.2 and 3 i.e. Kulwant Kaur and Davinder Kaur. Co-accused Varinder Singh @ Rana Cheema then intentionally struck his car into the car of the complainant. In the meantime, two more cars, one of which, driven by accused Harpreet Singh @ Happy also came to the spot in which four unidentified persons were seated, and in the other car there were five unidentified persons. Both these cars also stopped besides the car of the complainant. Thereafter, all the accused who were armed with lethal weapons, after getting got out of their respective vehicles, surrounded the car of the complainant and dragged them out. Respondent No.2-Kulwant Kaur and respondent No.3-Davinder Kaur along with co-accused Kashmir Singh raised a lalkara that the complainant and her husband be not spared and taught a lesson for helping Mithu Singh. On being exhorted, accused Harpreet Singh @ Happy and Varinder Singh @ Rana Cheema inflicted blows on the person of the husband of the complainant with their weapons and also caused firearm injuries. Accused Harpreet Singh @ Happy and Varinder Singh @ Rana Cheema further threatened the complainant at gun point that in case she dared to interfere in their affairs, her entire family would be eliminated. While going away, the accused snatched an amount of ₹95,000/- from the pocket of her husband. It has, thus,

been argued by the learned counsel that the private respondents, though not attributed any specific injury in the occurrence in question, had still been active participants as it was at their exhortation that the co-accused inflicted injuries on her husband, which the learned Trial Court erred in not appreciating, while passing the impugned order.

3. Learned counsel while referring to the role of respondent No.4-Dharminder Singh, has further submitted that though he was not named in the FIR by the complainant, however, it had been clearly stated in the FIR that there were some unidentified persons who were present in the vehicle of the co-accused at the time of alleged occurrence and respondent No.4 was one of those unidentified persons; as soon as the complainant learnt about the name of the unidentified person i.e. Dharminder Singh, she immediately got her supplementary statement recorded and named him therein. Learned counsel has vehemently argued that it was thus apparent that the Court below while passing the impugned order had mechanically dismissed the application under Section 319 of the Cr.P.C. by misinterpreting the parameters laid down by the Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab, (Constitution Bench) : 2014(3) SCC 92***. A prayer has, therefore, been made to allow the instant petition and order the summoning of the private respondents as additional accused.

4. I have heard learned counsel and perused the relevant material on record.

5. Section 319 of the Cr.P.C. deals with the power of a Court to proceed against such persons who appear to be guilty of an offence.

A Constitution Bench of the Apex Court in ***Hardeep Singh's case***

(*supra*), while dealing with the scope and extent of power of a Court under Section 319 of the Cr.P.C. has held as under:-

“98. Power under Section 319 Cr.P.C. is a discretionary and an extra- ordinary 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.

99. 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.”

6. Section 319 of the Cr.P.C. confers an extraordinary power upon the Court to summon a person as an additional accused to face trial, which is precisely the reason why this power should be used sparingly and only when some strong and compelling evidence is presented in the Court, during the course of trial. Furthermore, unless there is a reasonable probability of the case against the persons sought to be summoned as additional accused, ending in their conviction for the offences alleged, the Court should desist from summoning such

persons in a routine and mechanical manner under Section 319 of the Cr.P.C.

7. Coming to the case in hand, a perusal of the allegations levelled in the FIR as well as the deposition of the complainant reveals that there are no specific accusations made therein against respondents Kulwant Kaur and Davinder Kaur except that they were present in the vehicle with the co-accused during the occurrence in question and had instigated the co-accused by raising a 'lalkara' to carry out the crime. As far as respondent No.4-Dharminder Singh is concerned, it is a matter of record that neither was he named in the FIR in question nor any role much less any injury attributed to him even in the supplementary statement, recorded by the complainant.

8. Therefore, as a sequel to the above, this Court does not find any perversity much less illegality with the impugned order passed by the Court below. The petition as such is dismissed.

9. Since the main revision petition is dismissed, there is no need to pass separate order on the application for condonation of delay, which stands disposed of accordingly.

10. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

03.10.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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