

201 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-78-2019 (O&M)
Decided on : 10.03.2023

Sher Singh

..... Petitioner

Versus

Kamla and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Ramesh Kumar Dhiman, Advocate
for the petitioner.

Mr. H.S.Deol, Advocate
for respondents No.1 to 7.

Mr. Chetan Sharma, AAG, Haryana.

Manjari Nehru Kaul, J.(Oral)

CRM-11070-2023

Application is allowed as prayed for and statement of PW-1
(Annexure P-5) is taken on record subject to all just exceptions.

Main case

The petitioner is impugning the order dated 06.10.2018 passed
by the learned trial Court vide which his application under Section 319
Cr.PC for summoning respondents No.1 to 7 as additional accused, was
dismissed.

Learned counsel for the petitioner submits that it is a case of
version and cross-version wherein both the sides got criminal cases
registered against each other i.e.FIR No.125 dated 08.08.2016 u/s 148, 149,

323, 325, 341, 427, 506, 307 IPC at Police Station Bawal District Rewari (Annexure P-1) registered against the petitioner and others at the instance of respondent Balwan and FIR No.126 dated 09.08.2016 u/s 452, 323, 148, 149 IPC at Police Station Bawal District Rewari (Annexure P-2) registered against the opposite side at the instance of the petitioner Sher Singh.

Learned counsel *inter alia* contends that while stepping into the witness box as PW-1, the petitioner specifically deposed qua the role played by each of the private respondents in the occurrence in question, which took place on 07.08.2016 at about 8.30/9.30 am, however, the trial Court gravely erred in ignoring the evidence brought forth, against the private respondents while passing the impugned order. It has been further contended that there was enough medical evidence on record to corroborate the ocular testimony, which too was erroneously ignored by the trial Court.

Learned counsel for respondents No.1 to 7 has, however, vehemently opposed the prayer and submissions made by the counsel opposite by urging that a thorough investigation was carried out by the police after the registration of FIR in question and no material came to light from which it could be even remotely inferred that the proposed accused i.e. private respondents were even present much less had even participated in the occurrence in question. Hence, the investigating agency had rightly found the private respondents innocent and placed them in Column No.2. A prayer has therefore, been made to dismiss the instant petition as the impugned order was a well reasoned one and did not warrant any interference.

Heard learned counsel for the parties and perused the relevant material available on record.

For proper adjudication of the instant petition, it would be relevant to reproduce Section 319(1) Cr.PC, which is as under:

319. Power to proceed against other persons appearing to be guilty of offence.

(1) *Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*

The Constitution Bench of Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab, (Constitution Bench) : 2014(3) SCC 92***, while discussing the scope and extent of powers of a Court to summon a person as an additional accused during the course of an inquiry or trial in exercise of powers under Section 319 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.”

To deal with the present controversy, it would be apposite to reproduce the relevant portion of the translated version of FIR (Annexure P-2), which is as under:

“Statement of Sher Singh s/o Rati Ram caste Jat r/o Jhabua P.S.Bawal, District Rewari, aged 42 years, Mobile No.7082023061. Stated that I am resident of above stated address and doing agriculture work. Yesterday i.e. on 07.08.2016 at 8.30/9.30 pm Satyawar s/o Ramphal, caste Jat was going on motorcycle from bus stand towards his house. Srimati w/o Rajender caste Jat r/o Jhabua came out in the street from her house. The

motorcycle of Satyawar s/o Ramphal struck against Srimati. Due to the impact Srimati fell on the ground, Srimati started giving slaps to Satyawar. On this Satyawar caught her hand and threw his motorcycle at the spot and ran towards his house. Myself, Mahavir s/o Kishan Ram, Sube Singh s/o Kishan Ram, Rajender s/o Kishan Ram, Parkash s/o Ratti Ram caste Jat were having tea in the chowk at the house of Mahavir. That Satyawar along with members of his family namely Harish s/o Med Singh, Tinku s/o Ramphal, Sonu s/o Lelu, Sarjit s/o Khem Chand, Nagar s/o Khem Chand, Narinder s/o Mangtu Ram, Charsi Ram s/o Pappu, Kamla w/o Med Singh, wife of Ramphal, wife of Pappu, Bhim s/o Mangtu Ram, Pardeep s/o Med Singh, Anil s/o Sattu caste Jat residents of same village came with lathis, jelly and danda. After entering the house, Satyawar gave lathi blow on my hand then Harish gave lathi blow on my hand, thereafter, Satyawar gave lathi injuries to Sube Singh, Gharsi Ram and Sarjit gave injury to Rajender. In this quarrel, Mahavir s/o Kishan and Parkash s/o Ratti Ram also suffered injuries when we raised hue and cry. Attar Singh s/o Rati Ram came there and saved otherwise they would have inflicted more injuries to us. That I became unconscious due to injuries. Sube Singh,

Rajender, Mahavir, Parkash will tell themselves about their injuries. Thereafter my family members got myself, Sube Singh and Rajender got admitted at Government Hospital, Bawal. ...”

As per the allegations levelled in the FIR, though the presence of the proposed accused is shown at the place of occurrence, no specific injury has been attributed to them qua the petitioner. Respondent No.1-Kamla was not attributed any injury in the FIR, however, the petitioner-complainant while stepping into the witness box as PW-1 attributed a danda blow to her on the ring finger of his right hand. Learned counsel for the petitioner has failed to bring to the notice of this Court any medical evidence to corroborate the factum of the petitioner having received any injury on the finger of his right hand. As far as respondent No.6 Pardeep and respondent No.7 Anil are concerned, they were alleged to have inflicted injuries upon the person of Sube Singh, however, injured Sube Singh has not been examined yet before the trial Court. Further though the petitioner gave a vivid account of the occurrence, while getting the FIR registered and attributed specific roles to the accused persons, this Court finds it difficult to comprehend as to what prevented him from mentioning about the role played and injuries inflicted by the private respondents. In the aforementioned circumstances, this Court has no hesitation in observing that the petitioner has made material improvements by introducing new facts in his deposition.

As a sequel to the above discussion, in the absence of any

sufficient or cogent evidence against the private respondents, this Court does not find any error in the impugned order, which would warrant the interference of this Court. Accordingly, the present petition stands dismissed. However, anything observed hereinabove shall not be taken to be an expression of opinion on the merits of the case.

10.03.2023
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(MANJARI NEHRU KAUL)
JUDGE

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