

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

CRR No.537 of 2023

Reserved on:21.03.2024

Pronounced on: 01.04.2024

Gursewak Singh and others

.....Petitioners

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Arshpreet Khadial, Advocate for the petitioners.

Mr. Sahil R. Bakshi, AAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 397/401 Cr.P.C., petitioners have assailed order dated 16.08.2022, passed by learned Additional Sessions Judge, Bathinda, whereby the petitioners have been summoned as additional accused on an application under Section 319 Cr.P.C., to face trial in case FIR No.57 dated 20.05.2015 under Sections 307, 336, 325, 447, 148, 149, 120-B IPC and Section 25 (Act No.54 of 1959) at Police Station Talwandi Sabo, District Bathinda.

2. FIR was lodged on the statement of Gurjant Singh alias Chanan Singh resident of Village Singo, in which it was alleged that on 19.05.2015 at about 08:30 AM, various persons, duly named in the FIR, including the petitioners, armed with various kinds of weapons entered the fields of complainant party and started ploughing the fields forcibly and when the complainant party tried to stop them, they were caused injuries. In the statement, complainant also disclosed the roles played by numerous assailants including the petitioners.

3. After concluding investigation, Police challaned Sukhpal Singh,

Gora Singh alias Avtar Singh, Jarnail Singh, Satpal Singh and Babbu alias

Nahar Singh and later on, supplementary challan was also filed qua Jasbir Singh and Gurwinder Singh @ Binder Singh. Charges were framed on 21.11.2016 against the challaned accused under Sections 307, 325, 336, 447, 148, 149, 120-B IPC.

4. During trial, complainant – injured Gurjant Singh was examined as PW1 on 30.10.2019 and during his testimony, an application under Section 319 Cr.P.C was moved by the prosecution, which was allowed by way of the impugned order dated 16.08.2022 and the four petitioners were ordered to be summoned as additional accused.

5. It is contended by learned counsel that the only role attributed to petitioner No.1 is to have given a *Soti* (stick) blow to Bant Singh; that all four injuries to Bant Singh were declared simple in nature and that Gurjant Singh has not explained the seat of injuries as caused by petitioner No.1. It is further submitted that the complainant did not specify, as to whether petitioner Nirmal Singh was armed with a *Soti* (stick) or *Gandasa* and vaguely stated that accused Nirmal Singh and Makhan Singh had attacked Gursewak with their stick and gandasa hitting on his head but that as per the MLR of Gursewak, no injury on his head was found. It is further submitted that petitioner No.2 Aman Singh is attributed to have given a butt blow of .12 bore gun on the person of Gurjant along with an unknown person on the fingers of his right hand and right arm but there is no injury on the left hand of the complainant Gurjant Singh. Learned counsel contends that even the testimony of PW1 Gurjant was not complete; that trial may take long time to conclude and so, in all these circumstances, the impugned order be set aside.

6. Learned State Counsel has opposed the petition by submitting that after appraising the evidence on record, learned trial Court has rightly

summoned the petitioners to face trial under Section 319 Cr.P.C.

7. The issue regarding the scope and extent of power of the Court to arraign any person as an accused during the course of inquiry or trial in exercise of the power under section 319 Cr.P.C. has been set at rest by a Constitutional Bench of Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab, 2014 (1) R.C.R. (Criminal) 623** followed by another pronouncement in **Babubhai Bhimabhai Bokhiria and Another Vs. State of Gujarat and others, 2014 (2) RCR (Criminal) (SC) 915.**

8. After reviewing various precedents, Hon'ble Apex Court summarized the legal position in ***Hardeep Singh's case (cited supra)*** in the following words:

"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. 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."

9. After referring to aforesaid authority of Constitutional Bench, Hon'ble Supreme Court held in **Babubhai Bhimabhai Bokhiria's case (cited supra)** as under:

"Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as

that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher."

Same view has been reiterated in **Shiv Prakash Mishra vs. State of Uttar Pradesh 2019 (5) RCR (Criminal) 946.**

10. In the present case, complainant Gurjant Singh in his statement made before the Police (copy Annexure P1) specifically named the petitioners to be amongst the assailants and also the roles, which they had played in the commission of the crime. That FIR version has been supported by the complainant in his testimony before the Court on 30.10.2019.

11. It will be apposite to reproduce the relevant portion of the testimony of PW1 Gurjant Singh as made during trial. It follows as under:-

"I am agriculturist by profession. We are three brothers. The name of my eldest brothers are Joginder Singh and Balwinder Singh. We all brothers are married and have separate residence. We have joint land holding with accused Sukhpal Singh son of Harnarayan Singh resident of Village Singo. Accused Sukhpal Singh son of Harnarayan Singh wanted to take possession of our 9 Kanal land forcibly. On 19.05.2015 Sukhpal Singh said to me that he was going to take possession of our 9 Kanal land if I had power to stop him then I may use the same. I along with my elder brother Balwinder Singh, my nephew Gursewak Singh and my cousin Sukhwinder Singh and our relative Beant Singh resident of Behman Kaur Singh went towards our field and at about 8.30 am on 19.05.2015 we reached near our field and we saw that Sukhpal Singh son of Harnarayan Singh resident of Village Singo was on Mahindra Tractor with a cultivator and who was armed with the pistol, **Amar Singh** (*petitioner N: 2 herein*) son of Sukhpal Singh was armed with .12 bore gun, Gora Singh son of Sukhpal Singh was armed with stick (soti), Jarnail Singh son of Sajjan Singh who was on a eisher tractor along with trolley of blue colour, Satpal Singh son of Sajan Singh was armed with a Gandasa, Jasvir Singh son of Sajjan Singh was armed with stick (soti), Binder Singh son of Jarnail Singh was armed with a pistol, Babu Singh son of Jarnail Singh was armed with a stick (soti), Sewak Singh (*petitioner N: 1 herein*) son of Mithu Singh was armed with a stick (soti), all the above said accused are resident of village Singo. Jagga Singh son of Sandhu Singh, Nirmal Singh (*petitioner N: 3 herein*) son of Mithu Singh both resident of Village Golewala came there on their White Bolero vehicle and they were armed with sticks (sotis). Makhan Singh (*petitioner N: 4 herein*) son of Bahadur Singh resident of Village Veerewal came there on a white colour Zen car and four to five unknown persons who were armed with Gandasas and stick were also present there and all of the above said persons had started

cultivating our land jointly owned by us. We asked Sukhpal Singh and his companions not to cultivate the said land and not to disturb the brotherhood. Sukhpal Singh exhorted his above said accused to teach us a lesson for preventing them from cultivating the land. Sukhpal Singh fired a shot in the air from his pistol and he with the intention to kill my brother Sukhwinder Singh run over his tractor on him. Accused Jarnail Singh dashed his eisher tractor with my brother Balwinder Singh and when he fell down on the ground accused Sukhpal Singh gave reverse side blow of the Gandasa on his head. Accused Jasvir Singh and Babu Singh attacked by brother Balwinder Singh with Sotis which hit on his arm and on upper portion of the back and on right arm as well. Accused Nirmal Singh and Makhan Singh attacked Gursewak Singh with their Sotis and Gandasas which hit on his head. Accused Jagga Singh and Sewak Singh also gave sotis blows on Beant Singh. Accused Gora Singh gave stick blow on my beatings. Accused Aman Singh gave butt blow on left hand and unknown persons gave soti blows on fingers of my right hand and on my right arm. We raised alarm to save us from the attack of the accused persons. All the above said accused along with their weapons and vehicles fled away from the spot. My relative Rashpal Singh and my elder brother Joginder Singh arranged vehicle and rushed us to Civil Hospital Talwandi Sabo for treatment. After that we were referred to Civil Hospital Bathinda. My brother Sukhwinder Singh was referred to Faridkot for treatment. All the above said accused caused injuries to us due to the reason that we had stopped them from forcibly cultivating our land. My statement Ex.PA was recorded by the police. I identify the accused Sukhpal Singh, Gora Singh son of Sukhpal Singh, Jasvir Singh, Jarnail Singh, Satpal Singh Babu Singh @ Nahar Singh who are present in the court today. Accused Aman Singh son of Sukhpal Singh, Makhan Singh son of Bahadur Singh resident of Veerewal, Nirmal Singh son of Mithu Singh resident of Village Golewala, Jagga Singh son of Sadhu Singh resident of Village Golewala and Sewak Singh are not present in the court today.”

12. As is evident from the afore-said testimony of PW1 Gurjant Singh, he had not only specifically named all the four petitioners, he further told the weapons carried by them and the injuries caused by the petitioners to the complainant party. Thus, the version as made in the FIR, is supported by PW1.

13. Though the Police challaned the other assailants duly named in the FIR and in the testimony of PW1 Gurjant but did not challan the petitioners, without giving any reason. As has been held in the judgment of

Hon'ble Supreme Court in *Hardeep Singh Vs. State of Punjab and others, 2014(1) R.C.R. (Criminal) 623*, that it is the duty of the Court to do justice by punishing the real culprit and where the Investigating Agency for any reason does not array any of the real culprits as an accused, the Court is not powerless in calling the said accused to face trial.

14. As far as contention of learned counsel for the petitioners to the effect that statement of PW1 Gurjant Singh was not complete, when application under Section 319 Cr.P.C was moved and the same was allowed, it has no merit. In *Hardip Singh's case (supra)*, it has been clarified by Hon'ble Supreme Court as under:

“Considering the fact that under Section 319 Cr.P.C., a person against whom material is disclosed is only summoned to face trial and in such event under Section 319(4) Cr.P.C., the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.”

15. In view of the afore-said legal position, the contention of the petitioner is meritless that the PW1 was not tested during cross-examination before passing of the impugned order.

16. On account of the afore-said discussion, it is held that there is no merit in the present petition and so, the same is hereby dismissed.

Criminal Misc. application, if any, also stand disposed of.

April 01, 2024
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Whether Speaking/reasoned

Whether Reportable

Yes/No

Yes/No

(DEEPAK GUPTA)
JUDGE