



CRM-M-24107-2018 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-31003-2024 in/and

CRM-M-24107-2018 (O&M)

Date of decision: 7th August, 2024

Jaswant

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Kanwal Goyal, Advocate for the petitioner.
Mr. Neeraj Poswal, AAG, Haryana.
Ms. Suresha Rani, Advocate for respondents No. 2 to 4.

MANISHA BATRA, J (ORAL):-**CRM-31003-2024**

This application has been filed by the applicant for placing on record the copy of challan as Annexure P-11.

For the reasons mentioned in the application, the same is allowed, subject to all just exceptions. Annexure P-11 is ordered to be taken on record.

Main case

The instant petition has been filed under Section 482 of Cr.P.C. by the petitioner challenging the order dated 06.09.2017 passed by the Court of Sub Divisional Judicial Magistrate, Kanina in criminal case No. RBT-285 of 2014 titled as 'State Vs. Dashrath and others', arising out of FIR No. 415 dated 07.11.2015 registered under Sections 323/34/506 read with Section 34 of IPC, 1860 at Police Station Kanina as well as the order dated 23.04.2018



passed by the Court of learned Additional Sessions Judge, Narnaul in criminal revision No. 62 of 2017, thereby dismissing the petition filed by the petitioner against the order dated 06.09.2017.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that on 05.11.2015, on receipt of a ruqa at the police station from Community Health Centre, Kanina regarding admission of injured Bhoop Singh, Krishna, Savita and Jaswant all residents of PS Kanina, District Mahendergarh and their being referred to the PGIMS, Rohtak, a police party reached at Community Health Centre on 06.11.2015. The injured Bhoop Singh was admitted therein, whereas the remaining injured had been discharged. He recorded his statement alleging therein that on 05.11.2015 at about 8/9 PM, he had gone towards his house to relieve himself when accused Dashrath and Bhawani being armed with *lathis*, opened an assault upon him and caused injuries on his person. In the meanwhile, the present respondents and co-accused Jagdish, Chanda, Neetu, Kanchan and Raju also reached there and struck one blow each on his head with *lathis* which they were carrying due to which he fell down and became unconscious. The noises attracted his daughters-in-law Krishna, Sunita and son Jaswant, who rushed to the spot but they too sustained injuries at the hands of the assailants. On his statement, initially a case under Section 323 read with Section 506 of IPC was registered. Investigation proceedings were initiated. Subsequently, offence under Section 325 of IPC was also added. The accused Bhawani Singh, Dashrath, Chand Devi, Raju @ Rajbala and Nitu were arrested on 18.11.2017 and accused Jagdish was arrested on

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02.12.2015. As per the record, the respondents No. 2 to 4 who were named in the FIR were found to be innocent and had not been arrested and challaned. Their names were kept in column No.2 of the challan report. After completion of usual formalities and investigation, challan was presented before the Court and the co-accused are facing trial for commission of the aforementioned offences. After examining injured Krishna Devi and Jaswant, who appeared as PW-1 and PW-2 respectively before learned trial Court, an application under Section 319 of Cr.P.C. had been moved for summoning the respondents No. 2 to 4 as additional accused. The learned trial Court dismissed this application by order dated 06.09.2017. Vide order dated 23.04.2018, the revision petition as filed against the said order also stands dismissed by the Court of learned Additional Sessions Judge, Narnaul.

3. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that the impugned orders are not sustainable in the eyes of law as while passing the same the Courts below did not appreciate the evidence produced on record in a proper perspective, thereby causing manifest injustice. There was overwhelming evidence on record to prove the complicity of respondents No. 2 to 5 in the subject crime. However, the learned trial Court wrongly did not arraign them as additional accused. With these broad submissions, it is urged that the petition be allowed, the impugned orders be set aside and respondents No. 2 to 4 be ordered to be summoned as additional accused to face trial along with the accused already arraigned.



4. *Per contra*, learned counsel for respondents No. 2 to 4 has argued that learned trial Court and learned revisional Court had passed well reasoned order after taking into consideration, the nature of the evidence produced on record as well as other circumstances of the case and no ground for interfering in the same is made out. Accordingly, it is urged by him that the petition does not deserve to be allowed.

5. Learned State counsel has supported the arguments as raised by learned counsel for the petitioner by submitting that the petition deserves to be allowed.

6. I have heard learned counsel for the parties at considerable length and have gone through the record carefully.

7. Section 319 of Cr.P.C. empowers the Court to add any person, not being the accused before it, but against whom there appears during trial ,sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with the other accused. The principle of law with reference to exercise of jurisdiction under this Section has been well settled by the Constitutional Bench of Hon'ble Supreme Court in landmark judgment cited as '**Hardeep Singh and others Vs. State of Punjab and others, (2014) 3 SCC 92**', wherein it was observed that the power under Section 319 Cr.P.C. is discretionary and an extraordinary power. It has 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 material placed before the Court that such power should be exercised and not in a casual and cavalier manner. It was also observed 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 strong evidence than mere probability of his complicity. The test that has to be applied is one which is more than *prima facie* case as has been established at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 of Cr.P.C.

8. Reference can also be made to a recent pronouncement of Hon'ble Supreme Court cited as '***Sagar Vs. State of UP and another, (2022) 6 SCC 389***' wherein the Apex Court observed as under:-

"The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as notice above 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 unrebutted, would lead to conviction...."

9. It is also well settled proposition of law that an order under Section 319 of the Cr.P.C. should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s).



Sufficient and cogent reasons are required to be assigned by the Court so as to satisfy the ingredients of the provisions. Mere *ipse dixit* would not serve the purpose. The evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction and for this purpose, the Courts are required to apply stringent tests, one of such tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

10. On applying the above discussed proposition of law to the peculiar facts and circumstances of the case, I am of the considered opinion that the orders passed by the learned trial Court and learned revisional Court are not suffering from any illegality and do not warrant any interference. No doubt, the proposed accused were named in the FIR. However, during the investigation which was conducted by the police, they were found to be innocent and their names were kept in column No.2 of challan report. Copies of statements of the injured Krishna Devi as PW-1 and PW-2 Jaswant have been placed on record. They are shown to have stated in their respective depositions that the respondents/proposed additional accused had caused injuries on the head, left wrist and right wrist of PW-1. PW2 attributed injuries to the co-accused already arraigned and not to the present petitioner. They are shown to have some material improvements which are at variance with their statements during the courts of investigation. The learned courts below after considering their statement in detail had observed that no ground for summoning the respondents No.2 to 4 as additional accused had been made out. It is explicit from a perusal of the statements of PW-1 and PW-2



that no evidence what to say some stronger evidence then mere possibility of their complicity in the said offence has come on record. On the basis of mere probability of their complicity, they could not be summoned the face of trial along with the accused already arraigned. The evidence produced on record for the purpose of arriving at a finding that there was a complicity of the proposed accused in the crime, must not be more than an evidence, which if goes unrebutted would lead to conviction, but it must be more than *prima facie* evidence recorded at the time of framing of charge. There is absence of such satisfaction as in the evidence so led by the petitioner and PW-1 Krishna. As such, in my considered opinion, there was no scope for the trial Court under Section 319 of Cr.P.C. to form any opinion as to the guilt of the proposed accused and in the absence of such satisfaction, the learned trial Court rightly refrained itself from exercising powers under Section 319 of Cr.P.C. as the satisfaction desirable for summoning the proposed accused under Section 319 of Cr.P.C. was not found on the record. As such, no irregularity or illegality can be stated to have been committed by learned trial Court while passing the impugned order and dismissing the application of the petitioner, which was passed after analyzing the facts of the case in a proper perspective. This Court, therefore, has no reason to interfere with the findings as given by learned trial Court. Accordingly, the petition is dismissed.

[MANISHA BATRA]
JUDGE

7th August, 2024

Parveen Sharma

- 1. Whether speaking/ reasoned
- 2. Whether reportable

: Yes / No
: Yes / No