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

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**CRM-M No.17124 of 2024
Date of Decision: 31.07.2024**

Baljit Singh ... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Gurminder Singh Phull, Advocate,
for the petitioner.

Mr. Amandeep Singh Samra, AAG, Punjab,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner seeking quashing of order dated 31.10.2023 passed by the Court of Sub Divisional Judicial Magistrate, Bholath in case bearing No.CHI/142/2020 titled as *State v. Baljinder Singh @ Bobby and others* arising out of FIR No.105 dated 18.09.2020 registered under Sections 326, 324, 323, 148, 149 and 120-B of IPC at Police Station Begowal, District Kapurthala whereby the petitioner was ordered to be summoned as an additional accused.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the

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basis of statement recorded by complainant Davinder Kaur alleging therein that she was married with accused Lakhwinder Singh who was living abroad. Since the very inception of her matrimonial life, the accused Lakhwinder Singh along with the other members of his family and brother-in-law Baljit Singh i.e. the present petitioner used to harass her by levelling false accusations upon her. In the absence of her husband, she was thrown out of her matrimonial house by the present petitioner and his wife Sukhwinder Kaur and since October 2019, she along with her children was living in her parental village Pasibet. She alleged that on 17.09.2020, her sister Sumandeep Kaur had visited her and both of them had gone to Begowal city to make some purchases. While on the way, she was intercepted by the petitioner, co-accused Baljinder Singh and 5-6 unidentified persons who were armed with weapons. The petitioner raised a lalkara thereby proclaiming to kill her so as to end the conflicts with her and then he along with co-accused Baljinder Singh and the abovesaid unknown persons opened an assault upon the complainant and caused injuries to her with their weapons. The rescue alarm raised by her sister and herself attracted public persons, on seeing whom the assailants fled away. The victim was taken to hospital and was provided treatment. She alleged that the occurrence had taken place at the behest of her husband. She recorded her supplementary statement subsequently taking the names of the co-accused.

3. As revealed from the record, an inquiry was conducted in the matter and the petitioner was found to be innocent. Some more persons were

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nominated as accused. Offence under Section 307 of IPC was added. The accused were arrested and are facing trial for commission of offences punishable under Sections 323, 324, 326, 148 and 149 of IPC. During the course of trial, the complainant Davinder Kaur appeared as PW-1 and recorded her statement in chief. The statement of her sister i.e. PW-2 Sumandeep Kaur was also recorded in chief and thereafter an application under Section 319 of Cr.P.C. was moved by the complainant through learned Public Prosecutor making prayer for summoning the present petitioner as additional accused. This application was allowed by learned Sub Divisional Judicial Magistrate, Bholath vide order dated 31.10.2023 by observing that a prima facie case to summon him as additional accused was made out from the record.

4. Feeling aggrieved, the present petition has been filed by the petitioner on the grounds and it is argued by learned counsel that the impugned order is not sustainable in the eyes of law. An inquiry was conducted into the matter by a police officer of the rank of DSP Bholath who submitted a report that at the relevant time the petitioner was not present at the place of occurrence as the call detail records and location of his mobile established his presence at Village Nanowal District Gurdaspur and not at the place of occurrence. He has also reported that the petitioner was attending a Panchayat meeting during the course of whole day on the date of alleged occurrence and that he had been implicated by the complainant due to her having strained relations with the petitioner, her husband and other members of her in-laws family.

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5. It is further argued that the police authorities after conducting thorough investigation in the matter had found that the complicity of the petitioner in the subject crime had not been established and, therefore, while finding him to be innocent, he had not been arrested and challaned and his name was kept in Column No.2 of the challan report. It is stressed that while passing the impugned order, the learned trial Court ignored the fact that the testimony of the complainant was nothing more than mere reiteration of the allegations in the statement recorded by her before the police previously which culminated into lodging of FIR and on the same allegations, the petitioner was found to be innocent. It is argued that the statements of the complainant and her sister had been wrongly relied upon. There was no prima facie case on record to prove the involvement of the petitioner in the subject offences. The evidence so led on record did not raise any probability of his complicity in the crime. With these broad submissions, it is argued that the impugned order is liable to be set aside, application filed by the respondent-State under Section 319 Cr.P.C. is liable to be dismissed and further that the present petition deserves to be allowed.

6. Learned State counsel has submitted that there is no infirmity in the order passed by the Court below and, therefore, it is urged by him that the petition does not deserve to be allowed.

7. I have heard learned counsel for the parties at considerable length and have carefully gone through the material placed on record.

8. 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

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sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with other accused. The principle of law with reference to exercise of jurisdiction under this Section has been well settled by the Constitution Bench of Hon'ble Supreme Court in a celebrated pronouncement cited as **Hardeep Singh and others Vs. State of Punjab and others**, (2014) 3 SCC 92, wherein it was observed that the powers under Section 319 Cr.P.C. are to be exercised where strong and cogent evidence occurs against a person from the material placed before the Court. 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 but it also requires much strong evidence than mere probability of complicity of the person sought to be summoned as additional accused. 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 un rebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 of Cr.P.C.

9. It is also well settled proposition of law that if the prosecution at any stage produces evidence which satisfies the Court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed, have also committed the offence, the Court can take cognizance against them and try them along with the other accused. It must appear to the Court from the evidence tendered in the course of any enquiry or trial that any person not being the accused has committed any offence for

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which he could be tried together with the accused even though he might not have been chargesheeted by the investigating agency or may have been discharged at an earlier stage. In the present case, at the time of lodging of the FIR itself, the complainant had not only named the present petitioner but had also attributed specific overt acts to him by alleging that the petitioner had firstly made an exhortation to kill her and thereafter he along with the co-accused had opened an assault and caused injuries to her.

10. The petitioner has placed on record Annexure P-4 copy of an inquiry report submitted by D.S.P. Bholath, who conducted investigation in the matter, to the effect that the presence of the petitioner on 17.09.2020 was not established at the spot of occurrence at the relevant time and from the call records of his mobile phone as well as the statements recorded by certain witnesses, it was proved that he was present at Village Nanowal, District Gurdaspur which was at a reasonable distance from the place of occurrence at the relevant time. That might be so, however, the complainant herself and her sister who was eye-witness to the incident, at the first instance, not only named the petitioner as the main person who had opened assault upon the complainant but also attributed specific overt act to him. The complainant had sustained several injuries which were simple and grievous in nature and were caused by blunt as well as sharp edged weapons. She had attributed specific motive to the petitioner for causing injuries to her. In **Hardeep Singh's** case (Supra), it was observed that word "evidence" as defined in Section 3 of the Evidence Act and as mentioned in Section 319 of Cr.P.C. means such evidence as is made before the Court, in relation to

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the statements, and as produced before the Court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the Court to decide whether power under Section 319 Cr.P.C. is to be exercised and not on the basis of material collected during investigation. In **Sukhpal Singh Khaira v. State of Punjab**, 2018 (1) R.C.R. (Criminal) 56, it was observed that the question whether evidence is relevant, irrelevant, admissible or inadmissible are matters to be seen at the trial as there is full opportunity to the additional accused to object to the evidence as relevant or irrelevant and admissible or inadmissible. The prosecution cannot be forbidden from bringing to the Court such other evidence against additional accused persons which can be proved as legally admissible evidence. On going through the testimonies of PW-1 Davinder Kaur i.e. the complainant and PW-2 Sumandeep Kaur eye-witness to the occurrence, which have been relied upon by the trial Court while exercising power under Section 319 of Cr.P.C., it is revealed that they categorically deposed in support of the version as given at the time of lodging of the FIR. The inquiry report which is relied upon by the petitioner is not part of the challan report and, therefore, the same was obviously not taken into consideration by the learned trial Court while passing the impugned order nor the same can be taken into consideration at this stage by this Court. The interest of justice cannot be buried on the basis of this report if infact the petitioner is involved in the subject crime.

11. More so, the evidence led by these witnesses cannot be said to be leading to merely a prima facie case rather, it can be considered to be

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more than prima facie evidence. The learned trial Court by considering the said evidence had passed the impugned order thereby summoning the petitioner as an additional accused to face trial along with the co-accused. No perversity, irregularity or illegality can be stated to have been committed by the learned trial Court by doing so. As such, I see no reason to come to a contrary conclusion. Accordingly, finding no merit, the petition is dismissed.

31.07.2024
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(MANISHA BATRA)
JUDGE

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