



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

301-2

CRR-967-2023 (O&M)

Date of decision: 24.07.2024

Kuldeep Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Gurmohan Singh Bedi, Advocate and
Mr. Pawandeep Singh, Advocate
for the petitioner.

Mr. Shiva Khurmi, AAG, Punjab.

Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Kanishk Swaroop, Advocate
for respondents No.2 to 6.

MANJARI NEHRU KAUL, J.

1. The petitioner-complainant is challenging order dated 14.02.2023 (corrected on 06.03.2023) passed by learned Additional Sessions Judge, Gurdaspur whereby applications dated 29.09.2022 (Annexure P-9) and 09.02.2023 (Annexure P-10) filed under Section 319 of the Cr.P.C. in case FIR No.83 dated 25.05.2020 under Sections 302, 307, 148, 149 of the IPC and Sections 25/27 of the Arms Act (Sections 506, 120B and 34 of the IPC added, Sections 323, 148, 149 of the IPC dropped and Section 27 of the Arms Act dropped and Section 29 of the Arms Act added lateron) registered at Police Station Sadar Batala, Gurdaspur, were dismissed.

SUBMISSIONS OF THE PETITIONER



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2. Learned counsel for the petitioner has vehemently contended as under:-

2(a). that the learned Trial Court gravely erred by failing to recognise that respondents-Kulwant Kaur, Bhupinder Kaur and Palwinder Kaur (respondents No.4, 5 and 6 respectively) were explicitly named by the complainant-petitioner (hereinafter referred to as 'complainant') in the FIR in question. The complainant made specific allegations regarding their participation and the role played by them in the crime, and these allegations were reiterated by him before the learned Trial Court during his testimony as PW-1. Despite this clear evidence, the learned Trial Court erroneously dismissed the application filed under Section 319 of the Cr.P.C. vide the impugned order;

2(b). that the deposition of the complainant as PW-1 reveals that respondents No.4 to 6 had accompanied accused Gurdip Singh and Joginder Singh; all the three women were armed with sticks and instigated accused Gurdip Singh and Joginder Singh to teach a lesson to the complainant party which was preventing them from taking forcible possession of the village pond;

2(c). that Satnam Singh and Chand Singh (respondents No.2 and 3 respectively), although not named in the FIR, were part of the unlawful assembly at the scene. They were present on the JCB Machine at the location, attempting to take illegal possession of the disputed land;

2(d). that respondents Satnam Singh and Chand Singh were part of the unlawful assembly when accused Gurdip Singh and Joginder



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Singh fired fatal shots at the deceased Manjodh Singh and injured two others, Arshpreet Singh and Lovedeep Singh;

2(e). that the presence of respondents Satnam Singh and Chand Singh on the JCB Machine at the time of the occurrence, with respondents Satnam Singh as the owner and respondent Chand Singh as the driver, indicated their complicity in the crime. It was evident that they all arrived at the scene with a common object, clearly making them conspirators in the crime.

SUBMISSIONS OF RESPONDENTS NO.2 TO 6

3. Learned senior counsel for respondents No.2 to 6-accused has, however, vehemently opposed the prayer and submissions made by the counsel opposite and has submitted as under:-

3(a). that the complainant has concocted a false case against respondents No.4 to 6; the complainant party, motivated by evident reasons, has implicated these respondents because of their close familial ties to accused, Joginder Singh and Gurdip Singh. This is substantiated by the fact that the FIR lodged by the complainant, although purportedly based on eye witness account, only accused respondents No.4 to 6 of raising a lalkara; no injuries, whether minor or severe, were attributed to them in the FIR. In support, attention has been drawn to the FIR annexed as Annexure P-1;

3(b). that subsequently in an attempt to expand the scope of allegations, the complainant by way of a supplementary statement falsely accused respondents No.4 to 6 of inflicting injuries. However,



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the Post Mortem Report of the deceased, and the Medico Legal Reports of the two injured witness Arshpreet Singh and Lovedeep Singh clearly indicate that they sustained only firearm injuries, with no evidence of even a single blunt force injury that could implicate these three women, who were alleged to have been armed with sticks;

3(c). that respondents Satnam Singh and Chand Singh were neither named in the FIR nor were they attributed any overt act in the crime in question;

3(d). that neither was there any supplementary statement made with respect to their involvement in the crime in question; it was for the first time, when the complainant testified as PW-1 during trial, he attributed a role to Satnam Singh and Chand Singh (respondents No.2 and 3 respectively) in the crime in question;

3(e). that even if, for the sake of arguments, though not admitted, it is assumed that respondents Satnam Singh and Chand Singh were present at the scene of the alleged crime, the prosecution did not present any evidence of any history of strained relations between them and the complainant party;

3(f). that there was no indication that respondents Satnam Singh and Chand Singh had participated in the crime in question in any manner whatsoever; in fact, it is a matter of record that both respondents Satnam Singh and Chand Singh had been cited as witnesses by the prosecution which by itself would preclude them from being summoned as additional accused under Section 319 of the Cr.P.C.;



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3(g). that when all the aforementioned facts and circumstances are considered in their entirety, it becomes evident that the complainant party, in order to wreak vengeance upon accused Gurdip Singh and Joginder Singh has attempted to falsely implicate not only the female members of their family but also anyone remotely associated with them, which clearly demonstrates their malicious intent and lack of credibility.

FINDINGS OF THE COURT

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

5. Before proceeding further, it would be apposite to reproduce the contents of the FIR which are as under:-

*“Statement of Kuldip Singh son of Harbhajan Singh resident of Village Said Mubarak Kullian, P.S. Sadar Batala aged about 42 years Mobile No. 9878909915. Stated that I am resident of aforementioned address and I doing agricultural work. It was about 06:30 PM, my brother Kulwinder Singh, nephew Arshpreet Singh son of Satnam Singh, Surinder Singh son of Pal Singh, Manjodh Singh son of Sucha Singh, Lovedeep Singh son of Sawinder Singh were standing on the Phirni of the Village and was having a talk. In the meantime Gurdip Singh Vakil son of Joginder Singh, his father Joginder Singh son of Amar Singh, **mother Kulwant Kaur wife of Joginder Singh, sister in law wife of Kuljit Singh (Fauji) and wife of Gurdip Singh Vakil who were armed with Dang and Sotas, started to encroach the government pond.** All of us went to them and asked Gurdip Singh Vakil and his family members who were present at the spot to take forcible possession on the pond to make them understand, but they condemned us instead of understanding and we had small confrontation with Gurdip Singh. At 07:15 PM, Gurdip Singh during the verbal duel abused us and asked us to run away and he took out his revolver from the holster. Gurdip Singh, **mother- Kulwant Kaur, his sister in law and his wife gave Lalkara together that they should be***



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taught a lesson for stopping us from taking forcible possession of the pond and Gurdip Singh who had revolver in his hand fired the same and the bullet hit Manjodh Singh son of Sucha Singh on the backside of his head and he fell on the ground, then Gurdip Singh fired second bullet on the person of Lovedeep Singh son of Sawinder Singh which hit on his right bicep near shoulder and third fire shot by Gurdip Singh hit Arshpreet Singh son of Satnam Singh my nephew on his right side flank. We raised raula Maar dita Maar dita. In the meantime Joginder Singh son of Amar Singh snatch the revolver from his son Gurdip Singh and fired at Manjodh Singh who was lying on the ground which hit on his left side of his flank. We raised raula Maar dita Maar dita and the assailants ran away with their weapons alongwith JCB from the spot. This occurrence was witnessed by me, my brother Kulwinder Singh, Sawinder Singh and injured persons. We arranged for conveyance and took the injured Manjodh Singh, Lovedeep Singh and Arshpreet Singh to Civil Hospital Batala where the doctor referred them to Amritsar. Manjodh Singh was declared dead by the doctors on reaching Amandeep Hospital Amritsar. Lovedeep Singh, Arshpreet Singh are under treatment. Gurdip Singh and others have land adjoining the village pond and they want to amalgamate the pond with their land. We were trying to make them understand for not amalgamating the village pond with their land. The aforementioned nourish this grudge and gave fire injuries to Manjodh Singh, Lovedeep Singh and Arshpreet Singh without any reason and due to this Manjodh Singh has died and Arshpreet Singh, Lovedeep Singh are injured. Accused Gurdip- Singh vakil, Joginder Singh, Kulwant Kaur, wife of Kuljit Singh Fauji, wife of Gurdip Singh vakil. I certify against them. Legai action be taken against them. Today I present alongwith my family members at Amandeep Hospital Amritsar where you have recorded my statement. I have produced the reference slips before you. The statement is read and after understanding the same has been written and after reading the same, finding it to be correct Kuldip Singh signed in English below the statement which has been certified by Sukhraj Singh SHO P.S. Sadar Batala dated 24.05.2020. Police proceedings. I alongwith ASI Sukhjinder Singh 2503, Hem Singh 2625 PHC, Sukhdeep Singh 2110 CT. Satnam Singh 2288 Ct. Deepakjot Singh 1827 PHG. Gurnam Singh 2087 were on Corona Virus law and order duty and present at Aliwal Road, Adda Village Bullowal, when Head Munshi gave information of mobile phone that in the Village Said Mubarak Kullian, there is a gun shot fired and some persons are injured and the persons are admitted at Civil



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Hospital Batala. I alongwith police officials on Government vehicle PB-65-AS-7366 which was driven by Ct Manpreet Singh 2532 and ASI Sukhjinder Singh 2503 on private car Dezire to Civil Hospital Batala. On reaching guard incharge gave one chit no. 573 of Manjodh Singh, Lovedeep Singh, Arshpreet Singh and I reached the emergency ward alongwith officials. The doctor informed me that the injured are in serious condition and have been referred to Amritsar. I was present at Bypass Road Amritsar Batala and I received information from Amandeep Hospital on my mobile phone that the aforementioned persons have been brought to the hospital for treatment, out of them Manjodh Singh has passed away and Arshpreet Singh. Lovedeep Singh are under treatment. On which I alongwith police officials reached at Amandeep Hospital, where Kuldip Singh son of Harbhajan Singh resident of Village Said Mubarak Kullian. Patti in presence of his family members recorded his statement before me. The statement was written and read over to him and after finding it correct he signed below the same in English which i certify. From the statement offence U/S 302, 307, 148, 149 IPC & 25-27-54-59 of Arms Act is made out. The original statement is sent by hand to sepoy Manpreet Singh 2532 for registration of FIR FIR be registered and FIR no. be informed. Special reports be sent to officers and. Illaqa Magistrate. Control room be informed through wireless. I alongwith fellow officials conducting investigation. Certifies. Sukhraj Singh SHO dated 24.05.2020. Today in the area of Amandeep Hospital Amritsar at 11:20 PM, on receiving the statement, the FIR has been registered.”

6. Hon'ble the Supreme Court through its various judicial pronouncements has laid down the parameters required for summoning of any person as additional accused. In the cases of ***Hardeep Singh Vs. State of Punjab, (Constitution Bench) : 2014(3) SCC 92*** and ***Ramesh Chandra Srivastava Vs. The State of U.P. and another : 2021 SCC OnLine (SC) 741***, Hon'ble the Supreme clarified the standards of evidence needed at different stages of criminal proceedings to ensure justice for both the accused as well as the complainant/victims. Both these judicial pronouncements provide important insights into what



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kind of evidence is required to establish a basic case and to summon individuals as additional accused during a trial.

7. In ***Hardeep Singh's case (supra)***, Hon'ble the Supreme Court elaborated on the evidence needed to establish a prima facie case, which is a case strong enough to justify further legal proceedings. This does not require proof beyond a reasonable doubt but should be substantial enough to proceed against the tentative accused. Hon'ble the Supreme Court has laid down that to establish a prima facie case, the evidence must be more than just an indication or a slight possibility of the involvement of the tentative accused. The evidence should be strong enough to create a reasonable belief that the accused sought to be summoned under Section 319 of the Cr.P.C. is involved in the crime, even if the witness has not been thoroughly cross examined yet. This principle helps prevent trials based on weak or speculative evidence, protecting individuals from unnecessary criminal prosecution while ensuring that those with reasonable basis of guilt are prosecuted.

8. Furthermore, in ***Ramesh Chandra Srivastava's case (supra)***, Hon'ble the Supreme Court while elaborating upon the provisions of Section 319 of the Cr.P.C. and evidence required, held that the threshold for summoning additional accused is between establishing a basic case and being sure that the evidence, if unchallenged, would lead to their conviction. Hon'ble the Supreme Court reiterated that the evidence should be stronger than what is needed to establish a basic case but does not have to be as conclusive as proof beyond a reasonable doubt. Hence, a Court while summoning a



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person as an additional accused must base the same on solid and credible evidence, not just suspicion; a balance has to be struck between bringing all guilty parties to justice and protecting individuals from unnecessary criminal prosecution.

9. Coming first to the prayer made for summoning Satnam Singh and Chand Singh (respondents No.2 and 3): the only role which has been attributed to them by the complainant, and that too for the first time while deposing in the Court, is that the JCB Machine was owned by respondent No.2-Satnam Singh, and respondent No.3-Chand Singh, was working as a driver on it. Undisputedly, the quarrel, if any, was between the complainant party and accused Joginder Singh and Gurdip Singh; the JCB Machine had been hired by accused Joginder Singh and Gurdip Singh; both these respondents had been told that due to some seepage of water, the accused required some heap of earth to be put so as to avoid seepage into the land of the accused. In the circumstances, respondents No.2 and 3 could not be said to be sharing common object with accused Gurdip Singh and Joginder Singh, much less in any manner conspiring to commit the murder in question. It is not even the case of the prosecution that Satnam Singh and Chand Singh came down from their JCB Machine and participated in the quarrel or inflicted any injury on the opposite side or for that matter even tried to run over the JCB Machine on the opposite side. It would also be pertinent to point out that while registering the FIR in question, the complainant had not even by way of a whisper attributed any role to either of these respondents- accused nor had he named them; it had merely been



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mentioned that the accused party had come to the spot with a JCB Machine. It was only during his deposition before the learned Trial Court that for the first time the complainant named respondents No.2 and 3, and attributed a role to them of being part of the unlawful assembly. It would also be most pertinent to mention that both these accused had been cited as prosecution witnesses by the prosecution initially.

10. Regarding the roles assigned to respondents No.4 to 6, upon a thorough examination of the FIR which has been reproduced in the earlier part of this order, it is abundantly clear that aside from the presence of these three women armed with sticks along side accused Joginder Singh and Gurdip Singh, and a lalkara purportedly made by these three women not to spare the opposite side, there were no specific injuries attributed to them. Subsequently, the complainant made a supplementary statement under Section 161 of the Cr.P.C., alleging that these three women had also inflicted injuries on the deceased and the two injured witnesses using their sticks. No doubt, this allegation was reiterated by the complainant during his testimony as PW-1, however, given that this occurrence is allegedly an eye witness account, it would be essential to scrutinize the prima facie corroborative evidence surrounding these attributions. This scrutiny is particularly essential because, at the first instance, no injuries whatsoever were attributed to these three women, and the investigating agency also initially concluded that these women were innocent.

11. As already mentioned and is evident from a perusal of the



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FIR, no injuries were attributed to these three women; their alleged involvement was confined to just instigation. Consequently, Post Mortem Report of the deceased and the respective Medico Legal Reports of the injured witnesses become pivotal pieces of evidence in determining whether there is any prima facie corroborative evidence to support the allegations made in the supplementary statement by the complainant and during his examination in chief before the learned Trial Court. Notably, as per the Post Mortem Report of the deceased and the respective Medico Legal Reports of the injured which are part of the challan, neither the deceased nor the two injured witnesses sustained any blunt force injuries. It is most important to point that out apart from firearm injuries sustained by the deceased and the two injured witnesses, no additional injuries, particularly those caused by any blunt object, were found on either the deceased or the injured witnesses.

12. Additionally, it is crucial to highlight the statements of respondents Satnam Singh and Chand Singh made under Section 161 of the Cr.P.C., who were allegedly present on the JCB Machine, at the time of the occurrence in question. Their statements under Section 161 of the Cr.P.C. were recorded shortly after the occurrence. They were initially cited as prosecution witnesses and asserted that no women, much less the three respondents No.4 to 6, were present at the scene, let alone carrying sticks. Although an application was later made to summon them as additional accused under Section 319 of the Cr.P.C., their respective statements under Section 161 of the Cr.P.C. cannot be



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disregarded, specially when there is no prima facie medical evidence to substantiate the allegations against these three women.

13. Under these circumstances, a substantial doubt/question arises regarding the involvement of all the private respondents in the alleged occurrence. Therefore, the impugned order declining the prayer to summon them under Section 319 of the Cr.P.C. cannot be termed as erroneous.

14. In the facts and circumstances, this Court does not find any reason to interfere with the well reasoned impugned order. Accordingly, the instant revision petition is hereby dismissed.

15. 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.

24.07.2024

Vinay

**(MANJARI NEHRU KAUL)
JUDGE**

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