

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

128

CRM-M-18560-2024

Date of decision: 18.04.2024

Pardeep Singla

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vivek Salathia, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking setting aside of order dated 05.01.2024 (Annexure P-1) passed by learned Sessions Judge, Faridkot vide which the Revision Petition preferred by him was dismissed by the learned Revisional Court and his summoning under Section 319 of the Cr.P.C. as an additional accused in case FIR No.13 dated 01.12.2015 (Annexure P-3) under Sections 325, 324, 323, 341, 148, 149 of the IPC registered at Police Station Jaitu, District Faridkot, was upheld.

2. Learned counsel for the petitioner inter alia contends that the prosecution case was set in motion on a statement made by complainant, Vinod Kumar (hereinafter referred to as 'complainant'). As per allegations levelled in the FIR, on 31.01.2015 when the complainant was standing outside his shop, some unidentified persons with muffled faces, armed with deadly weapons, assaulted injured Harish Chander (hereinafter referred to as 'injured'). In fear, the complainant fled away from the spot. In support, learned counsel has drawn the attention of this Court to the contents of the FIR which has

been annexed as Annexure P-3. Learned counsel has vehemently argued that a perusal of the FIR in question clearly reveals that neither was the petitioner named therein nor was any suspicion raised qua his involvement in the crime in question. The petitioner being innocent rather stands affirmed as during investigation also the police did not find his involvement in the crime in question since he was not present at the spot; resultantly, he was rightly declared innocent and placed in column No.2. However, strangely during trial, the injured without any evidence on record, qua the involvement of the petitioner in the crime in question, improved upon the initial version given in the FIR, and accused him of being present and having participated in the assault which was carried upon him on the fateful day. Learned counsel has asserted that the petitioner is a senior official of the Municipal Committee, and in case he would have been indeed present at the scene, it would not have gone unnoticed by the complainant and the said fact would have been mentioned in the FIR. Learned counsel has thus prayed for setting aside of the impugned order on the ground that firstly he was not named in the FIR lodged by the complainant nor during his testimony in the Court. Furthermore, when the challan was presented by the investigating agency therein too he had been placed in column No.2 as he was not found involved in the crime and lastly on account of the fact that the petitioner was a well known person of the area; it could not be believed that the complainant would not have recognised him and thus not named him at the first instance while lodging the FIR. Learned counsel while placing reliance upon ***Hardeep Singh Vs. State of Punjab and others : 2014(3) SCC 92***, has submitted that the impugned

order runs contrary to the settled law and is driven by some political rivalry between the injured and the petitioner, with the sole motive to harass and embarrass him.

3. I have heard learned counsel for the petitioner and perused the relevant material on record including the FIR in question.

4. While elucidating the nuances of Section 319 of the Cr.P.C. it is imperative to delve into its provisions and the jurisprudence surrounding its application. Therefore, it would be apposite to reproduce the provisions of Section 319 of the Cr.P.C. which read 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.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

5. Section 319 of the Cr.P.C. empowers the Court

discretionary power to proceed against individuals who were not originally made an accused by the investigating agency, provided the evidence indicates their potential involvement in the offences at hand. This discretionary power is deemed extraordinary and must be exercised judiciously only when compelling reasons exist to take cognizance against these individuals. The principle with respect to the summoning of an additional accused under Section 319 of the Cr.P.C. has been underscored by Hon'ble the Supreme Court in various cases. Hon'ble the Supreme Court has emphasized in its various judicial pronouncements that the need for compelling reasons before summoning an additional accused under Section 319 of the Cr.P.C. is a discretionary power of a Court. While summoning an individual, a prima facie case against him/her should be discernible which would reasonably lead to his/her conviction. The degree of satisfaction required for summoning additional accused has been particularly elucidated by Hon'ble the Supreme Court in Hardeep Singh's case (supra) wherein it articulated that while only a prima facie case is necessary, the evidence must be stronger than mere probability of complicity. It further held that the Court must refrain from exercising this power unless convinced that the evidence, if unchallenged, would lead to conviction. Importantly, Hon'ble the Supreme Court clarified that the purpose of Section 319 of the Cr.P.C. is not to form an opinion of guilt but to ascertain potential joint liability with the accused already facing trial. Furthermore, under Section 319(4)(b) of the Cr.P.C., the degree of satisfaction for summoning additional accused under Section 319 of the Cr.P.C. should be akin to framing a charge, acknowledging

the potential delay and disruption to ongoing trials. Thus, before summoning a person as an additional accused under Section 319 of the Cr.P.C, the Trial Court is obligated to adopt a rigorous standard of appraisal of evidence, ensuring that the material on record could reasonably lead to the conviction of a person sought to be summoned.

6. Adverting to the present case, it would be relevant to reproduce the relevant part of the FIR in question, which reads as under:-

“Statement of Vinod Kumar @ Kaka s/o Radhe Sham, caste Pandit, R/o Mehtab Mandi, Jaito, aged about 28 years, mobile No.98769-12042 stated that I am working as Halwai. I am having a shop namely Radhe Sham at Gol Market, Jaito. Yesterday, on dated 31.01.2015, I was standing outside my shop, then at about 09:00 PM that 8-10 unknown youngmen whose faces were covered and were wearing shirts and trousers who were carrying in their hands baseballs, rods and kape etc came in front of my shop nearby Nand Variety Store and surrounded Dr. Harish Chander s/o Babu Ram, R/o Dularian wali Gali, Jaito and started beating him with baseballs, rods and kapiyan and due to fear, I closed my shop and ran away. That later on I came to know that Dr. Harish Chander has been admitted at Civil Hospital, Jaito for treatment who is now admitted at Amandeep Hospital, Chheharta Road, Amritsar and is under treatment. The above unknown persons beat Dr. Harish Chander and injured him. I have recorded my statement to you, heard and found correct. Sd/- Vinod Kumar @ Kaka (Vinod Kumar Sharma), certified by Sd/- Amarjit Singh, SI/SHO Police Station, Jaito, dated 01.02.2015.”

7. The issue at hand is whether the Trial Court's decision to summon the petitioner as additional accused alongside those already on trial, was justified or not.

8. As is apparent from a perusal of the contents of the FIR which already stands reproduced in the earlier part of this order, the case stems from an incident that took place on 31.01.2015 at 08:30

P.M. in Jaitu, wherein the injured sustained injuries at the hands of an unlawful assembly of individuals who were armed with deadly weapons. The FIR in question was not lodged by the injured but by one Vinod Kumar @ Kaka who witnessed a group of 8/10 persons with muffled faces assaulting the injured near one Nand Variety Store. The complainant, fearing for his safety, fled the scene. Subsequently, the injured while hospitalized, named the petitioner, and one other person namely Yadwinder Singh @ Yaddi Zaildar, among others, as the assailants who had attacked him on the fateful day. The above statement of the injured before the police was recorded on 06.02.2015. Despite the injured naming the petitioner and also detailing the role allegedly played by him in the occurrence in question, the investigating agency while filing challan excluded him from it on the ground that it had come during investigation that the petitioner was not found present at the scene of alleged crime, and had thus been placed in column No.2. However, during trial when the injured stepped into the witness box, he reiterated his statement before the police with respect to the participation of the petitioner in the crime in question, and in particular, deposed that the petitioner had not only threatened him but also assaulted him along with other assailants. The consistent narrative provided by the injured from the outset i.e. when his statement was recorded by the police on 06.02.2015 under Section 161 of the Cr.P.C. in the hospital, and thereafter even during trial undoubtedly implicates the petitioner as being a member of unlawful assembly and also being a perpetrator of the crime in question.

9. Given the consistent testimony and identification of the

petitioner as one of the key perpetrators of the crime in question, by the injured, the impugned order summoning him under Section 319 of the Cr.P.C. as additional accused to face trial cannot be faulted with. The best witness to the attack carried upon him, was the injured and injured alone. Merely because the complainant did not name the petitioner, would not in any manner, come to his rescue or hint towards his false implication. It needs to be emphasized that the discretion of the Trial Court to summon a person as an additional accused demands a thorough scrutiny of evidence, surpassing the prima facie standard which it must ascertain while passing an order under Section 319 of the Cr.P.C. that the evidence is of such gravity as to reasonably lead to the conviction of the person sought to be summoned.

10. In the present case, the learned Trial Court has rightly not relied upon on the material collected by the investigating agency but has taken into consideration the testimony of the injured who would have been the best person to have identified his attackers. The contention of the learned counsel that it had come during investigation that the petitioner was not present at the time of the alleged occurrence cannot be a ground for the learned Trial Court to not summon a person as an additional accused under Section 319 of the Cr.P.C.; the right of an accused to present his evidence of alibi would always be available to him during trial.

11. As a sequel to the above, this Court has no hesitation in observing that the exercise of its powers under Section 319 of the Cr.P.C. by the learned Trial Court while summoning the petitioner to face trial can neither be termed as erroneous or illegal. Therefore, the

instant petition is hereby dismissed.

12. 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.

18.04.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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