

2024:PHHC:111016



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

CRR No. 1298 of 2016 (O&M)

Reserved on : 30.07.2024

Pronounced on : 29.08.2024

Gurbaj Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Jasraj Singh, Advocate
for the petitioner. (Through VC)

Mr. Satjot Singh, AAG, Punjab
for respondent No. 1-State.

Ms. Neha Dewan, Advocate
for respondent No. 2/complainant.

MANISHA BATRA, J.

1. Challenge in this revision petition is to the order dated 03.08.2015, passed by the Court of learned Additional Sessions Judge, Patiala in Sessions case bearing No. 217 of 2013, titled as ***State vs. Joginder Singh and others***, arising out of FIR No. 458 dated 10.10.2013, registered under Sections 307, 326, 325, 341, 323, 148, 149 of IPC at Police Station Tripuri, Patiala, whereby an application, filed by the complainant under Section 319 Cr.P.C. for summoning the petitioners as additional accused to face trial with accused already arraigned in the aforementioned FIR, had been allowed.

2. The facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the allegations that on 09.10.2013 at about 6.30 pm, Gurmukh Singh, nephew of the complainant

2024:PHHC:111016



was buying ration from some shop at Bus Stand village Baran, when accused Jaswant Singh reached there and asked him as to why Gurmukh Singh was staring at him. Gurmukh Singh later told him that he was not doing so but Jaswant Singh started having scuffle with Gurmukh Singh and uprooted his beard. However, he was rescued with the intervention of the persons, who were present at the spot. The complainant received information about this incident on receipt of a telephonic call from injured Gurmukh Singh and then he along with Jasbir Singh and some other persons reached at the spot and then they went back to their village. The complainant further alleged that while he along with Sada Singh was going towards his village on a motorcycle, the accused Joginder Singh, Gagandeep Singh, Satnam Singh and Jaswant Singh intercepted and opened an assault upon them, thereby causing injuries. The complainant became unconscious and fell down. Witnesses, Manjit Singh, Paramjit Singh and Harpreet Singh had rushed for their rescue but they too sustained injuries at the hands of assailants. He was admitted to hospital. He alleged that the cause of grudge was that complainant was elected as panchayat member and had filed a case against accused Jaswant Singh for vacating panchayat land, thereby offending him. After registration of FIR, investigation proceedings were initiated. Then on 11.10.2013, the complainant recorded his supplementary statement alleging that the petitioners along with two more persons namely, Sukhdev Singh and Bhupinder Singh were also amongst the assailants. On the basis of the same, the petitioners were nominated as accused. As further revealed from the record, during the course of investigation, the petitioners were found to be innocent on an enquiry being conducted by the DSP City-II, Patiala. Therefore, they were not arrested and

2024:PHHC:111016



challaned and their names were kept in the coloum No.2 of the challan report, which was submitted against the co-accused. After completion of investigation, challan was presented against the co-accused and they were charge-sheeted for commission of the aforementioned offence. As further revealed from the record, after the examination of the complainant as a witness before the trial court, he moved an application under Section 319 Cr.P.C. for summoning the petitioners as additional accused and by the impugned order dated 03.08.2015, the same was allowed.

3. It is argued by learned counsel for the petitioners that the impugned order is not sustainable in the eyes of law as while passing the same, learned trial Court ignored the fact that there was no positive, cogent, and convincing evidence on record to proceed against them as additional accused. The complainant had not made any specific attribution to the petitioners and he had simply reiterated his version as given while recording his supplementary statement to the Police. This version had been discarded by the investigating agency while declaring the petitioners as innocent. In fact, a detailed enquiry, which was conducted by a Police officer of the rank of DSP City-II, Patiala had revealed that the petitioners were working in their factory at the time when alleged incident had taken place. Several persons had sworn affidavits in this regard. The presence of the petitioners at the place of the occurrence, at the relevant time, had not been established nor it was stated by the complainant either in the supplementary statement or in the sworn deposition that the petitioners had caused any injuries to him or any other person or had done any such overt act, which proved their complicity in the subject crime. It is argued that while passing the impugned order, learned trial

2024:PHHC:111016



court did not apply its judicious mind and a cryptic and non-speaking order had been passed. With these broad submissions, it is argued that impugned order is not sustainable in the eyes of law and is liable to be set aside. It is also stressed that the petition deserves to be accepted.

4. *Per contra*, it is argued by learned State counsel, assisted by learned counsel for the complainant, that there is no infirmity or illegality in the impugned order. There was *prima facie* sufficient evidence on record to prove that the petitioners had formed membership of an unlawful assembly along with other accused already arraigned and in prosecution of common object of that unlawful assembly, they had caused injuries to the complainant and other injured. It is, therefore, argued that there is no merit in the petition and it is urged that the same is liable to be dismissed.

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

6. 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 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 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 warrants. It is not to be exercised because the Magistrate or the

2024:PHHC:111016



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 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.

7. Reference can also have 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 un rebutted, would lead to conviction....”

2024:PHHC:111016



8. It is also well settled proposition of law that an order under Section 319 of 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.

9. On applying the above discussed proposition of law to the peculiar facts and circumstances of the present case and after giving due deliberation to the contentions as raised by both the sides, I am of the considered opinion that the present petition deserves to be allowed. A perusal of the material placed on record reveals that the petitioners had not been named as the persons, who along with co-accused were present at the time of occurrence or had caused any injuries to the complainant and other injured. They were nominated as accused on the basis of supplementary statement recorded by the complainant Inderjeet Singh (Annexure P-4) on 11.10.2023 i.e. two days after the incident, by saying that he forgot to disclose the names of the petitioners and two more persons at the time of recording his statement which culminated into lodging of the FIR. A copy of the said statement is part of record and the same reveals that he had not attributed any overt act to the petitioners and had simply stated that they were present at the spot of

2024:PHHC:111016



occurrence along with the co-accused. In his sworn deposition, the complainant deposed that the petitioners were accompanied by the other accused at the time of occurrence. However, even then he did not attribute any specific overt act to either of the petitioners and did not say that the petitioners had caused any injury to him or to any other injured. Rather, he admitted that an enquiry was conducted by the DSP City, Patiala in the matter. Though he feigned ignorance about the fate of enquiry and stated that he did not know that the petitioners were found innocent in that enquiry, but still it was not his version that they were amongst the persons, who had either caused injuries to him or made by exhortation or had done any such act, which amounted to their being members of unlawful assembly constituted by the accused already arraigned and facing trial.

10. Then a perusal of testimony of PW- 2 Manjit Singh, who was examined in chief before passing of the impugned order, reveals that he too did not attribute any specific overt act to the present petitioner and simply stated that the petitioner Ram Singh and another son of Satnam Singh (father of the petitioner Gurbaj Singh), who was also known by the name of Bhura were amongst the accused, who were facing trial. He did not say as to whether any participation was made by the petitioners in the occurrence and if so, as to what specific act had committed by them, which amounted to their forming membership of unlawful assembly committing offence of rioting, voluntarily causing hurt to the injured besides making an attempt to kill them. The petitioners have placed on record Annexure P-2, copy of report dated 28.11.2013 submitted by the DSP City-II, Patiala to SP, Patiala on 26.11.2013 showing that he had conducted a detailed enquiry in the matter and had

2024:PHHC:111016



reported that at the time of occurrence, the petitioners were performing their duty in the factory and were not present at the spot. On a cursory perusal of this report, it is revealed that concerned DSP had taken affidavits of several persons as named in this report for reaching at this conclusion. Even if, this enquiry report is ignored, still it is revealed from the material placed on record in the form of the supplementary statement recorded by the complainant as well as sworn depositions of PW-2 and the complainant that even if it is believed that the petitioners were present at the time of occurrence, still for want of any specific allegation that they had participated in occurrence or were part of unlawful assembly along with co-accused and had done anything in the prosecution of common object of unlawful assembly, their complicity has not been established.

11. As such, obviously there was absence of any satisfaction in the evidence led before the trial Court, on the basis of which, any finding could reasonably be given that there was any *prima facie* evidence that was stronger than mere probability of the complicity of the present petitioners in commission of the crime alleged to have been committed by them along with the co-accused already arraigned. Therefore, 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 trial Court should have refrained itself from exercising power under Section 319 of Cr.P.C. as the satisfaction desirable for summoning the petitioners under Section 319 of Cr.P.C. was not found on the record.

11. Resultantly, in view of the discussion as made above, the present revision petition is allowed. The impugned order dated 03.08.2015, passed by

2024:PHHC:111016



the Court of learned Additional Sessions Judge, Patiala in Sessions case bearing No. 217 of 2013, titled as *State vs. Joginder Singh and others*, arising out of FIR No. 458 dated 10.10.2013, registered under Sections 307, 326, 325, 341, 323, 148, 149 of IPC at Police Station Tripuri, Patiala, summoning the petitioners as additional accused under Section 319 Cr.P.C. is hereby set aside. Let a copy of this order be sent to the Court concerned, so that further proceedings could take place.

29.08.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No