



CRM-M-28274-2024

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

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CRM-M-28274-2024

Date of decision: 30th August, 2024

Kiran Bala

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rahul Dev Singh, Advocate for the petitioner.
Mr. A.S. Samra, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

The instant petition has been filed by the petitioner seeking quashing of order dated 10.06.2019 passed by the Court of learned Judicial Magistrate Ist Class, Pathankot in case titled as 'State Vs. Manohar Singh' arising out of FIR No. 46 dated 05.11.2017 registered under Sections 323 and 325 read with Section 34 of IPC at Police Station Sadar, Pathankot, whereby an application filed under Section 319 of Cr.P.C. by the petitioner for summoning the respondents No. 2 and 3 as additional accused had been dismissed as well as the order dated 18.07.2023 passed by learned Additional Sessions Judge, Pathankot thereby upholding the order of the learned Magistrate.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the criminal law had swung into action in this case on the basis of statement recorded by the complainant-petitioner- Kiran Bala on 13.10.2017 alleging therein that on the same day, at about 7:00 AM, she



noticed that respondents No. 2 and 3 along with accused Raju, Bhargar and Pujari were raising construction of a wall on the property belonging to her family. On seeing that, she told them to stop raising any construction without getting demarcation of their property done. Smt. Rekha Rani, Sarpanch of her village who was present at the spot also tried to stop respondents No. 2 and 3 and the accused from raising such construction but instead of doing such, they opened an attack upon her by felling her on the foundation which was being dug by them on the spot, by pulling her hair and by causing injuries on her person with the weapons which they were carrying in their hands. Her family members had rushed for her rescue. She was taken to hospital and had been medico legally examined. Initially, a rapat No. 28 was entered as a case under Section 323 of IPC which amounted to non-cognizable offence had been made out. Subsequently, on receipt of X-ray reports and opinion that the injury No.1 as sustained by the complainant was grievous in nature, offences under Sections 325, 148 and 149 of IPC were added and FIR was formally registered. Investigation proceedings were initiated. The accused already arraigned were arrested. After completion of usual formalities challan was presented against them and they are facing trial. The respondents No. 2 and 3 were found to be innocent and their names were kept under column No.2 of the challan report.

3. Further, as emerged from the material placed on record, after examination of the complainant i.e. petitioner Kiran Bala, PW-3 Rekha and PW-4 Bimla, who were eye-witnesses to the occurrence, the prosecution moved an application under Section 319 of Cr.P.C. for summoning the



respondents No. 2 and 3 as additional accused. This application was dismissed by the court of learned Judicial Magistrate Ist Class by impugned order dated 10.06.2019 which as mentioned above has been affirmed by the Court of learned Additional Sessions Judge, Pathankot vide order dated 18.07.2023.

4. It has been argued by learned counsel for the petitioner that the impugned order passed by learned trial Magistrate is not sustainable in the eyes of law as while passing the same, the learned trial Court ignored that there was sufficient cogent and convincing evidence on record to prove the complicity of respondents No. 2 and 3 in the subject crime. They were not only named in the complaint as lodged by the petitioner at the earliest opportunity but in the evidence produced before the trial Court also, their involvement in the commission of offences had been duly narrated by herself and the other material witnesses. It is submitted that the specific acts had been attributed to respondents No. 2 and 3. Infact, it was respondent No.2 who was the precipitator of the subject crime and initiated the altercation. It is further argued that the courts below did not apply their judicious mind and passed non-speaking orders without due appreciation of the evidence produced on record. Hence, it is argued that the impugned orders are liable to be set aside, the petition deserves to be accepted and the respondents No. 2 and 3 are liable to be summoned as additional accused and to face trial along with the accused already arraigned.

5. Learned State counsel has chosen not to address any argument in the matter.



6. Due deliberations have been given to the contentions as raised above.

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 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 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 be made to authority 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.... ”

8. On applying the aforementioned proposition of law to the peculiar facts and circumstances of the present case, this Court gathers an impression that the learned trial Court committed no irregularity or illegality in dismissing the petition filed by the petitioner. No doubt, the respondents No. 2 and 3 were named in the FIR, however, during investigation conducted by the police, both of were found to be innocent as it was reiterated that their presence at the time of occurrence at the spot was not established. On a perusal of testimony of the petitioner recorded during trial, it is revealed that the same is nothing more than the repetition of the statement which was already there in the form of her complaint. Then so far as the testimonies of PW-3 Rekha and PW-4 Bimla, who have claimed themselves to be eye-witnesses are concerned, on perusal of the same, it is revealed that PW-3 Rekha did not attribute any overt act to respondent No.2- Satpal though she deposed that he was present there. She did not take the name of respondent No.3- Sukhdev at all. On the other hand, PW-4 Bimla



Devi did not attribute any overt act to respondent No.2- Satpal and simply stated that Sukhdev had given kicks to the petitioner. Their statements on this point are not consistent. Moreso, in their statements recorded under Section 161 of Cr.P.C., they did not say anything about the presence of respondents No. 2 and 3. They have also not been attributed specific injuries to either respondent No. 2 and 3. A perusal of medico legal reports of the petitioner, reveals that no visible injury on her abdomen had been found. This report also does not reveal that due to alleged pulling of hair of the petitioner by respondent No.2, there was any pain in her scalp/head or any other injury had been found therein. The injury that has been opined to be grievous in nature has not been attributed to respondents No. 2 and 3. The evidence produced on record of the trial Court as cannot be stated to be of such nature which could be stated to be much stronger than mere probability of complicity of respondents No. 2 and 3 for the purpose of summoning respondents No. 2 and 3 as additional accused. The test which was required to be applied was of a degree of satisfaction which is more than that of a *prima facie* case as established at the time of framing of charge but short of satisfaction to an extent that the evidence, if goes un rebutted might lead to conviction of the proposed accused. In the absence of such satisfaction, the trial Court should have restrained from exercising the power under Section 319 of Cr.P.C. and that is what has been exactly done by it. As such, no illegality or irregularity can be stated to have been committed by the learned trial Court while passing the impugned order, dismissing the application filed by the petitioner which had been passed after analyzing the evidence



produced on record in a proper perspective. Consequently, no ground has been made out to interfere with the order passed by the Court of learned Additional Sessions Judge, thereby upholding the order of trial Court. Accordingly, having no reason to interfere with the findings as given by the courts below, the same are affirmed and the petition is dismissed.

8. Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

30th August, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |