

202 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRR-3379-2017 (O&M)

Date of Decision: 12.03.2024

MAHAVIR SINGH

...Petitioner

V/S

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anmol Partap Singh Mann, Advocate for
for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

Mr. Shakti Singh, Advocate
for respondent No. 2.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in the present petition is for setting aside of the order dated 04.07.2017 passed by learned Additional Sessions Judge, Kaithal vide which the petitioner has been summoned to face trial as additional accused under Section 319 of Cr.P.C. in the case bearing FIR No. 46 dated 08.03.2016 registered under Sections 148, 149, 395, 427 and 506 of Indian Penal Code at Police Station Kalayat District Kaithal.

FACTUAL MATRIX

2. Brief facts of the case are that an FIR was lodged on 08.03.2016 under sections 148, 149, 395, 427, 506 IPC at Police Station Kalayat District Kaithal by one Dhirender Partap s/o Bhupender r/o Kalayat District Kaithal, Haryana against 5 persons namely Gurmel s/o Chajju caste Jaat r/o Village Mataur, Rajesh s/o Jila caste Jaat r/o Village Mataur, Jitender Kala s/o Unknown caste Jaat r/o Railway Road Kalayat, Muthu s/o Pala caste Jaat r/o Village Kamalpur, Rajesh s/o Unknown caste Jaat r/o Village Malpur. The brief allegations levelled against the accused mentioned in the

to the effect that the complainant Dhirender Partap was running a

mobile shop at Kainchi Chowk on the Mataur Road Kalayat. On 20.02.2016, at about 1-2 PM, the above mentioned 5 accused along with 60 other peoples armed with various weapons such as Lathis, Gandasis, Jalis, Swords and Iron Rods, attacked his shop. In the FIR, it was specifically mentioned that accused no. 1 Gurmel had raised a lalkara to teach a lesson to the people of the complainant's community for blocking the reservation of Jaats and he threatened to eliminate the complainant. The complainant had alleged that on hearing lalkara by the above mentioned Gurmel accused no. 1, all the other persons rushed towards the shop of the complainant and on seeing them he (complainant) ran away from his shop to save his life. The complainant has further alleged that Rajesh s/o Jila r/o Mataur and Jitender Kala r/o Railway Road Kalayat had raised lalkara to loot the items in shop. Upon which the other persons accompanying the above mentioned accused had looted various items such as Mobiles, Laptops, Computers, Photostat and Scanner Machines etc. from his shop in addition to Rs. 20,000 cash and another items. The complainant has alleged that above mentioned accused broke the aluminium, wooden and glass fittings installed in his shop. On the basis of the above mentioned allegations, the complainant had prayed that strict action be taken against the above mentioned persons.

CONTENTIONS

3. Learned counsel for the petitioner *inter alia* contends that initially in the FIR, five accused persons were named and as per the case set up by the prosecution, the petitioner was not named in the FIR and he was not even placed in column No. 2 of the final report under Section 173 of Cr.P.C. Respondent No. 2-complainant and Rishipal-PW-1 have never made any complaint with regard to complicity of the petitioner in the alleged

the Investigating Agency has not conducted the investigation in fair and proper manner. Rishipal appeared before the learned trial Court as PW-1 and produced one CD of occurrence and stated that he is running a shop in the Kainchi Chowk, Kalayat and on 19.02.2016, several persons have gathered at the chowk and at around 2 PM, these agitators have broken the shutters of various shops, including the shop of the complainant namely Dhirender Partap and indulged into arson and looting. It is further stated by Rishipal that he has made videography of the occurrence in his mobile phone and he is also having some photographs. The CD was produced, in which he has alleged to have identified the petitioner along with other accused persons. Thereafter, one application under Section 319 of Cr.P.C. was filed before the learned trial Court and petitioner was summoned by the learned trial Court as additional accused, against the settled law. It is further contended that there is nothing on record to satisfy the test of more than prima facie case as required for summoning of the petitioner as additional accused by exercising power under Section 319 of Cr.P.C. In the absence of any such material, the learned trial Court has fell into grave error by exercising the power under Section 319 of Cr.P.C. in a mechanical manner. Learned counsel for the petitioner has placed reliance upon the judgment of Hon'ble Supreme Court rendered in ***Hardeep Singh Vs. State of Punjab SC 2014(1) RCR (Criminal) 623.***

4. Per contra, learned State counsel assisted by learned counsel for respondent No. 2 submits that the learned trial Court has rightly summoned the petitioner as additional accused as the witnesses while deposing before the trial Court have specifically named the petitioner in the alleged incident and there is no infirmity in the order dated 04.07.2017 passed by the learned

trial Court.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that entire case set up by the prosecution against the petitioner is based upon the CD-video recording, which is stated to have been made by Rishipal, at the time of incident. During the course of arguments, learned counsel for the petitioner has made specific assertion that identity of the petitioner cannot be established in the videography contained in the said CD. However, same was refuted by learned counsel for respondent No. 2 and he made categorical assertion that petitioner is clearly seen being part of the agitators.

6. Keeping in view the rival contentions of the parties, a Coordinate Bench of this Court passed the following order on 15.10.2018:

Learned counsel for the petitioner submitted that behind the back of the petitioner, petitioner has been identified before the Court below with reference to CD which was played in the Court with the assistance of one Sh. Harpal Singh, System Officer. When the petitioner is disputing relating to identifying him as one of the accused, identification behind the back of the petitioner would be without giving an opportunity to him. Therefore, Special Judge, Kaithal is hereby directed to re-process the examination of CD and so also identification of the petitioner. In this regard, petitioner and other concerned persons are hereby directed to appear before Special Judge, Kaithal on 30.10.2018, for the purpose of above process.

List this matter on 18.12.2018.

Till the next date of hearing, official respondents are hereby restrained to arrest the petitioner.

7. Pursuant to the aforementioned directions, the veracity of the allegations and the identity of the petitioner was verified by learned

Additional Sessions Judge, Kaithal and vide order dated 30.10.2018, it has been concluded that PW-1 Rishipal has identified some other person namely Baljit Singh as accused and it has been further reported by the concerned Court that face of the said person could not be conveniently and rationally recognized. However, PW-1 Rishipal insisted that he has made video recording and he can recognize the petitioner. In order to test the correctness of his version, a test identification parade was organized. PW-1 Rishipal has not identified the petitioner as one of the agitators involved in the alleged incident, rather he has recognized some other person as one of the accused.

8. Before proceeding further, it is pertinent to discuss the perspicuous observations made by the Hon'ble Supreme Court in some of its recent judgements. Discussing the scope of Section 319 Cr.P.C., the Constitution Bench of Hon'ble Supreme Court in case titled **Hardeep Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623** has laid down that:

"105. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. 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 evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold 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 stronger evidence than mere probability of his complicity. The test that 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. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of

the accused.”

9. Again, Hon'ble Supreme Court in the case of **Sagar Vs. State of Uttar Pradesh and another Criminal Appeal No. 397 of 2022 (Arising out of SLP(Crl) No.7373 of 2021)**, referring to **Hardeep Singh (supra)** laid down that:

"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 noticed 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."

10. Recently Hon'ble Supreme Court in case of **Juhru & Ors. Versus Karim & Anr. 2023 AIR (Supreme Court) 1160** observing the scope of section 319 Cr.P.C held that:

"It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima-facie case is sine quo non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial Court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material is, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked."

11. In the case at hand, the entire edifice of the case set up by respondent no.2 against the petitioner is based solely on the Video-CD recording which falls flat as verification qua the same has been done by learned Special Judge. There is no evidence to remotely suggest that the petitioner was present at the place of the alleged incident.

CONCLUSION

12. In view of the discussion made hereinabove, the present revision petition stands allowed and the impugned order dated 04.07.2017 passed by learned Additional Sessions Judge, Kaithal is hereby set aside.
13. Pending CRM(s), if any, are also disposed of accordingly.

12.03.2024
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

(HARPREET SINGH BRAR)
JUDGE