

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

CRR-2069-2023

Date of Decision: 12.08.2024

BIJENDER

.....PETITIONER

VERSUS

STATE OF HARYANA AND ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Dr. Malkiat Singh, Advocate,
Mr. Narinder Sindher and Mr. Rajat Turka, Advocates
for the petitioner.

Mr. B.S.Virk, Sr DAG, Haryana

SANDEEP MOUDGIL, J

1. This petition has been filed for setting aside the impugned order dated 07.06.2023 vide which the application filed under Section 319 of the Code of Criminal Procedure for summoning the respondents as additional accused to face trial in case – FIR No.263 dated 06.05.2022, under Section 120-B/201/307/34 of the Indian Penal Code (for short – ‘IPC’) and Section 25 of Arms Act, 1959, registered at Police Station Gannaur, District Sonapat, has been dismissed.

2. It is contended by the learned counsel for the petitioner that the learned Additional Sessions Judge, Sonapat (hereinafter referred as ‘trial Court’) has erred in dismissing the application filed under Section 319 Cr.P.C. because the respondent No.2 has played an active role in the conspiracy hatched by him and as a result, he had purchased the land of

Karambir, the brother of the complainant and tried to grab the land of the

petitioner or to dispossess him. The petitioner herein, has specifically stated that the person sitting on the rear seat of the motor cycle fired several shots upon him with an intention to kill and had sustained bullet injuries on his hip and two injuries on his right leg. Further, Aman had made call to the petitioner on false excuse to uplift the wheat from one place to another place, which shows that he also had relations with the respondent. Recoveries of weapons and cartridges were made from the accused on the basis of their disclosure statements as such investigation proceedings and recoveries are in consonance with the prosecution version. Surprisingly, name of the respondent No.2 – Surrender was dropped by the police in the final report who was the main conspirator. As such, the order passed by the learned Court below dismissing the application under Section 319 Cr.P.C. is absolutely illegal and is liable to be set aside.

3. On the other hand, learned State Counsel and has submitted that the order passed by the learned Court below is a just and proper order and no fault can be found with it. The investigation conducted by the Investigating Officer could not bring out any involvement of the respondent No.2 in the present case. The allegation against the respondent No.2 was found to be false. As such, the present petition deserves dismissal being without any force and substance.

4. Heard learned counsel for the respective parties at length and Case file perused.

5. The present petition pertains to the fact that police authorities after conducting the investigations did not find any involvement of the respondent No.2 in the present case and accordingly dropped his name and kept his name in column No.2 in the challan. The learned Court below

has dismissed the application under Section 319 Cr.P.C. filed by the petitioner on the ground that the allegation against the respondent is that co-accused had fired on the complainant on the instigation of Surrender. The offenders were Karambir and Sonu who had fired shots. After their arrest, both these offenders/accused had suffered disclosure statements that the proposed accused, i.e., respondent herein, Surrender had no role to play in the matter and no other incriminating material had surfaced against the proposed accused during investigation conducted by the police.

6. This Court also does not find any other allegation against the respondent No.2 except that the accused fired at him at the instigation of the respondent but it is surprising that how an instigation can be made or assumed to be made without the instigator being present at the spot. There is nothing of the sort coming from the mouth of the complainant either in FIR or deposition before the Court that respondent No.2 – Surrender was present on the spot for instigation. Further, it is the own case of the complainant that dispute is between him and his brother – Karambir. Therefore, the role of respondent No.2 cannot be assumed from any angle.

7. Hon'ble Supreme Court in ***Criminal Appeal No.549 of 2023 [arising out of Special Leave petition (Criminal) No.1658 of 2020] titled Juhru & Ors. Vs. Karim & Anr. reported as Juhru v. Karim (SC) : Law Finder Doc Id #2134545*** has dealt with the issue of summoning a person as additional accused under Section 319 Cr.P.C. and has concluded that :

“Summoning of a person at the very threshold of the trial may be discouraged – 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 ought not to be invoked.”

8. Therefore, there is no allegation against the respondent except that of instigation and accordingly, the learned Court below has rightly taken a decision to dismiss the application under Section 319 Cr.P.C. because the role of the respondent is not similar to the co-accused who by firing on the petitioner/complainant have committed the offence under Section 307 IPC moreover, respondent’s participation in the alleged occurrence and crime has not come on record from any angle.

9. Consequently, the present petition has no force and substance which may compel this Court to take a different view than the one taken by the learned Additional Sessions Judge, Sonapat and accordingly, the order dated 07.06.2023 vide which the application filed under Section 319 of the Code of Criminal Procedure for summoning the respondents as additional accused to face trial in case – FIR No.263 dated 06.05.2022, under Section 120-B/201/307/34 of the Indian Penal Code (for short – ‘IPC’) and Section 25 of Arms Act, 1959, registered at Police Station Gannaur, District Sonapat, has been dismissed stands upheld.

10. Hence, the present petition stands dismissed.

12.08.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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