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

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CRR-1757-2024 (O&M)
Date of decision: 18.11.2024

Jagdev Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Parampreet Singh Paul, Advocate
for the petitioner.

Mr. Rubal Pawar, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. This revision petition has been filed by the petitioner against the order dated 06.06.2024, passed by the Court of learned Additional Sessions Judge, Rupnagar in Sessions Case No. 72 of 2023, titled as ***State vs. Jagtar Singh***, arising out of FIR No. 22 dated 22.02.2023, registered under Section 302 read with Section 34 of IPC at Police Station Sri Chamkaur Sahib, whereby an application filed under Section 319 of the Code of Criminal Procedure (*for short 'the Code'*) was allowed and the petitioner and one Sarabjit Singh were ordered to be summoned as additional accused and were directed to face trial for commission of offence punishable under Section 302 of IPC along with accused already arraigned.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of the statement recorded by complainant Balwinder Singh alleging that on 22.02.2023, on receipt of a call on his mobile phone from his father-in-law Surjit Singh to the effect that accused Kaka Singh along with his brothers was

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beating him and calling upon him to reach there by apprehending that otherwise he would be killed, he had rushed towards village Mohan Majra and on reaching at the spot, he found his father-in-law to be sitting near the culvert. He informed the complainant that he was going towards village Behrampur in connection with some work and while on way, he was intercepted by Kaka Singh and Jagtar Singh, both sons of Khajan Singh, as well as by Sarabjit Singh. All three of them were armed with *dandas*. They had extended beatings to him and then fled away while threatening him. The complainant alleged that on seeing critical condition of his father-in-law, he immediately rushed him to Civil Hospital, Sri Machhiwara Sahib, wherein he was given first aid and then was referred to Raja Hospital, SBS Nagar, wherein he was declared as brought dead. While alleging that above named Jagtar Singh, Kaka Singh and Sarabjit Singh had assaulted the victim, thereby causing his homicidal death as they had money dispute with the victim, he prayed for taking action in the matter. After registration of FIR, investigation proceedings were initiated. Inquest proceedings and post-mortem examination of the dead body of the victim were conducted. As per medico-legal report, the victim had sustained multiple rib fractures leading to Pneumothorax and then leading to his death. During the course of investigation, it was revealed that Jagtar Singh and Kaka Singh were one and the same person. He was arrested. Accused Sarabjit Singh and brother of Jagtar Singh @ Kaka Singh namely Jagdev Singh s/o Khajan Singh i.e. the present petitioner were found to be innocent and their names were kept in Column No. 2 of challan report, which was presented against the accused Jagtar Singh @ Kaka only.

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3. As revealed from the record, during trial, complainant Balwinder Singh appeared before the learned trial Court as a witness and deposed that the petitioner along with his nephew Sarabjit Singh and the accused already arraigned had caused injuries to the victim and this fact had been disclosed by the victim to him. After recording statement of the complainant by way of examination-in-chief, an application under Section 319 of the Code was moved by the prosecution, which as discussed above, had been allowed by the learned trial Court, vide impugned order dated 06.06.2024.

4. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as while passing the same, the learned trial Court did not apply its judicious mind. The impugned order is based on conjectures and surmises and is non-speaking. The learned trial Court ignored the fact that there was no allegation in the FIR that the petitioner was present at the spot or caused any injury to the victim. The petitioner had been named during the course of investigation by the complainant, who had produced an affidavit before the Investigating Officer. No overt act had been attributed to him. The Investigating Officer, on conducting thorough investigation, had found the petitioner and two more persons, namely Ravinder Singh and Sarabjit Singh, as innocent. Even their call details record and tower location had been collected but nothing incriminating could be found against the petitioner. The Investigating Officer had recorded the statement of Hukam Singh, who had reached at the spot at first instance, and he did not name the petitioner, and levelled allegations against co-accused Jagtar Singh only, who was the accused already arraigned.

It is submitted that material improvements have been made by the

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complainant in his statement recorded before the learned trial Court. No *prima facie* case has been made out against him. There are no chances of his conviction, even on believing the allegations levelled against him to be correct. It is further argued that the application for summoning the petitioner as additional accused had been filed to abuse the process of the Court. With these broad submissions, it is that the present petition deserves to be allowed and the impugned order is liable to be set aside.

5. Status report has been filed by the respondent-State. It is submitted therein that during the course of investigation, only the accused who is already arraigned i.e. Jagtar Singh @ Kaka was proved to have assaulted the victim and caused injuries to him, which resulted into his death. Other persons named in the complaint/FIR were found to be innocent. It is submitted that additional accused Sarabjit Singh has not appeared before the learned trial Court after passing of the impugned order and has been declared a proclaimed person. During the course of investigation, it transpired that Jagtar Singh and Kaka Singh were one and the same person and he was arrested. It is argued by learned State counsel that the learned trial Court after considering the evidence produced on record has rightly passed the impugned order and it is, therefore, urged that the petition is liable to be dismissed.

6. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

7. Section 319 of the Code 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

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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 of the Code. 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, 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 the Code. In a recent judgment rendered by Hon'ble Supreme Court in ***Sukhpal Singh Khaira vs. State of Punjab : (2023) 1 SCC 289***, it is held that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court to have committed any offence and such accused has been

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excluded in the charge sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.

8. On applying the above discussed principle of law to the peculiar facts of the present case, this Court gathers an impression that the learned trial Court did not commit any irregularity or illegality in allowing the application filed under Section 319 of the Code. No doubt, the petitioner was not specifically mentioned in the FIR, which was recorded at the behest of complainant Balwinder Singh, however, he had disclosed at that time itself that the victim had informed him that Jagtar Singh and Kaka Singh, both sons of Khajan Singh, and their nephew Sarabjit Singh had intercepted him and had assaulted him with wooden sticks. There is no dispute about the fact that during the course of investigation, Jagtar Singh and Kaka Singh were found to be names of one and the same person and he was even arrested and challaned, whereas the present petitioner had been found to be innocent. A perusal of the contents of the reply as filed by the respondent-State reveals that he had been exonerated on the ground that on collecting the call details record of his mobile phone, it was found that its location was not at the place of occurrence at the relevant time. It might be so. However, the question to be considered is as to whether simply on that ground, it can be inferred that the petitioner was not one of the assailants, especially when at the time of lodging of FIR itself, it was disclosed that two sons of Khajan Singh along with their nephew Sarabjit Singh had assaulted the victim and undisputedly, the petitioner is the second son of Khajan Singh. The learned trial Court, while relying upon the

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testimony of the complainant Balwinder Singh, has passed the impugned order. A perusal of his deposition reveals that he had deposed that the victim, who was his father-in-law, had been extended beatings by two sons of Khajan Singh and additional accused Sarabjit Singh. Some mistake/lapse in mentioning the correct name of the second son of Khajan Singh cannot be considered to be a ground for holding that the petitioner was not involved in the commission of subject crime. He might not be specifically named in the FIR but being second son of Khajan Singh, the probability of his complicity in the subject crime cannot be ruled out, only because of the fact that his correct name had not been mentioned as since the very beginning the prosecution version was that two sons of Khajan Singh and Sarabjit Singh had assaulted the victim. The contents of the FIR as well as the evidence, which has come on record so far, are prima facie sufficient to prove the complicity of the petitioner in commission of subject crime and it cannot be stated at this stage that his prosecution would amount to abuse of process of Court or there is no likelihood of his conviction

9. It is well settled proposition of law that the provisions of Section 319 of the Code, being salutary one, the same cannot be diluted by importing within its scope the principles of natural justice which in any case would be followed during the trial. It is the duty of the Court to give further effect to the words used by the Legislature in Section 319 of the Code, so as to encompass any situation which the Court may have to deal with while proceeding to try an offence and not to allow the person, who deserved to be tried, to go scot free by not being summoned for the commission of crime which can be gathered from the material presented by the prosecution. The test that has to

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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. The evidence produced on record by the prosecution in the form of testimony of the complainant is prima facie sufficient to prove the complicity of the accused and it is this evidence that has to be taken into consideration. Reference in this regard can be made to the observations made by Hon’ble Supreme Court in ***Saeeda Khatoon Arshi vs. State of U.P. and another : (2020) Supreme Court Cases 323*** and ***Suman vs. State of Rajasthan and another : 2010 AIR (Supreme Court) 518***.

10. In view of the discussion as made above, no illegality or infirmity is found in the impugned order, as the same has been passed by the learned trial Court after analyzing the facts of the case in a proper perspective. Accordingly, finding no merit in the petition, the same is dismissed.

11. However, it is made clear that any observation made herein above shall have no bearing on the merits of the case as the same are only for the purpose of deciding the present petition.

18.11.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No