

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

CRR-18-2023

Date of Reserve:08.04.2024

Date of Decision:30.04.2024

Ajay

...Petitioner

Vs.

State of Haryana and others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Ms. Rakshi Shahrawat, Advocate
for the petitioner.

Mr. Karan Garg, AAG, Haryana.

Mr. Puneet Malik, Advocate for
Mr. Manish Dhankar, Advocate
for respondents No.2 and 3.

N.S.Shekhawat J.

1. The present revision petition has been preferred against the order dated 23.11.2022 passed by the Court of Additional Sessions Judge, Gurugram, whereby the application filed by the petitioner/complainant under Section 319 Cr.P.C for summoning respondents No.2 and 3 as an additional accused was ordered to be dismissed.

2. As per the case of the prosecution, the FIR No. 102 dated 22.02.2016 under Sections 302,34 of IPC and under Sections 25,27,54,59 of Arms Act,Police Station Sector-29, DLF Gurugram was registered on the basis of the statement made by Ajay, petitioner against unknown persons and the same has been reproduced below:-

*“Statement of Ajay S/o Jagani Caste Gurjar Resident Ulhawas
Police Station Badshahpur District Gurgaon Age 24 Years, Stated*

that I am resident of the above mentioned address. Today me and my brother Deepak and Baham Singh's son Bhagmal caste Gurjar had come to Badhwadi Gurgaon Galleria Market Sushant Lok After finishing work, we were standing outside Galleria Market at around 11.15 pm, then two boys came riding on a motorcycle and the boy sitting behind on the motorcycle fired at us, that bullet hit my brother Deepak and as a result, my brother fell down and I could not read the number plate of the motorcycle. Then I and my friend Bham Singh got my brother Deepak admitted to Paras Hospital for treatment. It is requested that legal action be taken against the unknown motorcyclists. Statement heard and written as correct. Sd Ajay mob no 9953250010.”

3. During the course of investigation, on 26.02.2016, the petitioner moved a complaint Ex.P-2 against Karambir and respondents No.2 and 3 to the police and specifically named respondents No.2 and 3. It was alleged that Karambir, main accused had asked Rajbir to give his revolver and thereafter, Karambir fired on Deepak, since deceased and ran away in the mall. When the petitioner tried to contact his family members, Rajbir snatched his phone, threatened and pressurized him to move the application, on the basis of which the FIR was registered in the present case.

4. Learned counsel for the petitioner contends that in the present case, specific role was assigned to respondents No.2 and 3, during the course of investigation and they were wrongly exonerated as an accused and both the respondents No.2 and 3 were made prosecution witnesses. Learned counsel further contends that in fact, the initial complaint Ex.P-1 dated 21.02.2016 was moved by him under the pressure of respondents No.2 and 3. However, after 04 days, i.e 26.02.2016, the petitioner moved a complaint (Ex.P-2) and stated the

correct facts to the police. He further contends that Rajbir had handed over his revolver to Karambir and respondents No.2 and 3 were liable to be arrayed as an accused along with Karambir in the present case.

5. A detailed status report by way of an affidavit of Deputy Commissioner of Police, East, Gurugram has been filed on behalf of respondent-State.

6. Learned State counsel submits that on 22.02.2016, the petitioner had got the FIR registered against two unknown boys, who had come on a motorcycle and had killed Deepak by firing shots on him. He further submits that during the course of investigation, it transpired that a bullet fired from the pistol of Karambir firstly pierced his hand and thereafter, the same bullet had hit the chest of the Deepak, who was standing outside the car. Learned State counsel further submits that the statement of Satbir, respondent No.3 was recorded under Section 175 Cr.P.C, wherein he heard about firing of gun shot upon his nephew, Deepak and he had visited Paras Hospital also. Even, Satbir, respondent No.3 stated that he did not know as to who had fired the gun shot on Deepak, deceased and had identified the dead body of Deepak. Learned State counsel further submitted that during the course of investigation, the scientific modes of investigation were adopted and a polygraph test was got conducted on Ajay complainant/petitioner, Rajbir (respondent No.2), Anil and Pawan, both witnesses. As per the report submitted by FSL Madhuban, no incriminating evidence appeared on record against Rajbir, respondent No.2. Even otherwise, during the course of investigation, respondents No.2 and 3 were found to be innocent and were not challaned by the police.

7. Learned counsel appearing on behalf of respondents No.2 and 3

had vehemently opposed the submissions made by learned counsel for the petitioner on the ground that Deepak, was killed by two unknown boys, who had come on a motorcycle and the entire occurrence was witnessed by Ajay, petitioner. Even he had requested for taking legal action against the unknown motorcyclists. However, after 04 days, i.e. 26.02.2016, he had moved a complaint Ex.P-2 and changed the entire case of the prosecution and named several persons with an ulterior motive. Learned counsel further submits that even during the course of investigation, no evidence was found against respondents No.2 and 3 and their involvement could not be proved in the crime.

8. After hearing learned counsel for the parties and perusing the record, this Court is of the considered opinion that the present petition deserves to be dismissed by this Court.

9. In fact, the provisions contained in Section 319 Cr.P.C confers discretionary powers on the Court to summons the persons, who were not charge-sheeted by the police. However, it must appear to the Court that some other person also, who is not facing the trial, may also have been involved in the offence. The law is well settled that no straight jacket formula can be laid down with respect to the conditions precedent for arriving at such an opinion. However, if the Court comes to the conclusion that such person, who is sought to be summoned, had also participated in the commission of crime and the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial, then such person can be arraigned as an accused with the other accused, who are already facing the trial. Even otherwise, power under Section 319 Cr.P.C is a discretionary and extraordinary

power and it has to be exercised sparingly and only in those cases, where the circumstances of the case so warrant. In the present case also, the Trial Court correctly observed that a person cannot be summoned to face trial merely on the wish of complainant. In the present case, there was no evidence showing the involvement of respondents No.2 and 3 in the crime. Initially, a complaint Ex.P-1 dated 22.02.2016 was moved by the petitioner against two unknown persons, who had fired the shots and fled on a motorcycle. However, in the second complaint Ex.P-2 dated 26.02.2016, the petitioner not only named the accused, but had also assigned specific roles to all the accused and had submitted the vivid description of the entire occurrence. Even, the scientific evidence collected by the police during the course of investigation, clearly ruled out the participation of the respondents No.2 and 3 in the crime. Apart from that, even Karambir accused had also sustained fire arm injury in his hand, which was not only proved by medical evidence, but also was referred by Pawan and Rajesh, in their respective statements recorded under Section 161 Cr.P.C. Thus, the trial Court was justified in rejecting the prayer of the petitioner of summoning the respondents No.2 and 3 as an additional accused in the present case. Thus, finding no merits, the present petition is ordered to be dismissed.

30.04.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

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