

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

CRR No.2897 of 2012 (O&M)

Date of decision : 04.12.2012

Gurmail Singh @ Bhola and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sherry K. Singla, Advocate,
for the petitioners.

Mr. Mehardeep Singh, DAG, Punjab.

Mr. S.S. Brar, Advocate for respondent No.2.

JITENDRA CHAUHAN, J. (ORAL)

The present revision petition has been filed by the petitioner, inter alia, challenging the order dated 10.09.2012, passed by the learned Judicial Magistrate First Class, Bathinda, whereby, the application preferred by the complainant-respondent No.2, under Section 319 Cr.P.C. has been allowed and the petitioners have been summoned to face the trial along with the other accused persons.

The learned counsel contends that the statement of the complainant while appearing as PW-3, is merely a repetition of

the allegations levelled in the FIR. It is further contended that during the investigation conducted by the Police, the petitioners were not found to be involved in the alleged crime. No fresh evidence has been brought on record by the complainant.

On the other hand, the learned State counsel submits that the complainant levelled specific allegations against the petitioners in his statement and he also withstood the acid test of cross-examination.

Heard.

Section 319 Cr.P.C. reads as under:-

“319. Power to proceed against other persons appearing to be guilty of offence.-(1) Where, in the course of any inquiry into, or trial of an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by

such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then -(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause(a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

In the instant case, on the complaint made by the complainant, investigation was carried out and, vide report of DSP, Rural, Bathinda, dated 24.10.2006, it was found that the accused-petitioners were not involved in the alleged occurrence. Therefore, their names were proposed to be kept in column No.2. It has also come on record that petitioner No.1 is the son of Surjit Singh, who had filed criminal complaint against the complainant and his family members and the latter have been summoned by the trial Court, vide Annexure P-4.

Petitioner Nos.2 to 4 are household ladies. The age of petitioner No.2 is aged stated to be about 80 years. The complainant suffered abrasion in the middle finger of his left hand as per the MLR, Annexure P-6.

In Hukam Chand and another Vs. State of Haryana and another, 2007(3) RCR (Criminal) 141, it has been held as under:-

“Concededly, the matter was investigated by the police after the FIR had been recorded on the statement of the complainant. The petitioners had been found innocent and were placed in the Column No.II. Thereafter, during the course of proceedings, the statement of the complainant was also recorded, which in fact, was merely a reiteration of what has been stated in the FIR. No other evidence was there before the Court on the basis of which complicity of the petitioners could be established. The Hon'ble Supreme Court in a judgment reported as **2000(2) RCR (Criminal) 75** has observed as under :-

“11. The basic requirements for invoking the above section is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well as tried along with the already arraigned accused.

12. But even then, what is conferred on the Court is only a discretion as could be discerned from the

words “the Court may proceed against such person”. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the Court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the Court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the Court to proceed against each other persons.”

For summoning under Section 319 of the Cr.P.C., there has to be some evidence before the Court which would indicate the complicity of the persons who are sought to be summoned or some material should have come on record which may prompt the court to believe that the persons so accused are likely to be involved, and their conviction is likely to result, in the eventuality of their facing the trial, and the onslaught of the evidence to be adduced by the prosecution. The mere statement, ipso facto, cannot form the basis of summoning the persons under Section 319 of the Cr.P.C. For the reasons aforesaid, the present petition is allowed”

In the instant case as well, the complainant has merely reiterated his version during his examination in Court as recorded

in the FIR. He has not been able to bring forth any fresh evidence or material on record to substantiate his allegations.

This Court, in Ganesh Vs. State of Haryana and another, 2007(2) RCR (Criminal); it has been held as under:-

“The Court while dealing with an application under Section 319 Cr.P.C. is not to be swayed by mere allegations that may come in the statements of overzealous witnesses during the course of trial. If the person named suggestively forms a part of chain of events leading to the commission of an offence, then summoning no doubt is justified but if it merely enlarges the arena of the number of accused because of the misplaced enthusiasm of a complaint to see all, those related to the accused, in the dock, then such a practice needless to say is to be discouraged and the Court does not have to unwittingly become a tool in the story of vendetta unleashed by complainant or any other witness.”

In view of the foregoing discussion, this Court feels that the learned summoning Court fell in error while summoning the accused-petitioners to face trial.

Accordingly, the present petition is allowed and the impugned order dated 10.09.2012, passed by the learned Judicial Magistrate First Class, Bathinda, is hereby set aside and the application under Section 319 Cr.P.C. for summoning the petitioners as additional accused is dismissed.

04.12.2012

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**(JITENDRA CHAUHAN)
JUDGE**

Note : Whether to be referred to Reporter : Yes / No