
R.N.R.

Before Alok Singh, J.

HARDEV SINGH,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondent

CrI. R. No. 1772 of 2010

18th April, 2011

Code of Criminal Procedure, 1973—S.319—Summoning of persons as additional accused to face trial—No injury attributed to person sought to be summoned—Tendency to implicate all near and dear of accused—Power u/s 319 Cr.P.C.—Exercise of—Not on basis of vague, ambiguous or flouting statements made by prosecution witnesses—No illegality, jurisdictional error or infirmity in findings of trial Court—Petition dismissed.

Held, that power under Section 319 of the Code of Criminal Procedure must be invoked with great caution and very sparingly when Court is satisfied that strong and sufficient evidence is available on the record

and further if such evidence stand unrebutted would lead to the conviction and further Court finds that joint trial would be just and proper. Power under Section 319 of the Code should not be exercised on the basis of vague, ambiguous or flouting statements made by prosecution witnesses.

(Para 8)

H.R. Nohria, Advocate, *for the petitioner*.

K.D. Sachdeva, Addl. A.G. Punjab.

Suresh Goel, Advocate, for respondents No. 2 to 6.

ALOK SINGH, J. (ORAL)

(1) Hardev Singh—petitioner has knocked the door of this Court by way of present revision petition challenging the order dated 28th April, 2010, passed by Additional Sessions Judge, Barnala, by virtue of which the application moved under Section 319 Cr.P.C. for summoning of Pappu, Bhanta Singh, Bagga Singh, Surjit Singh and Gurcharan Singh as additional accused to face trial for the offence under Sections 323, 324, 506, 34 IPC was dismissed.

(2) The facts necessary for the disposal of this petition are that on 27th August, 2008 a case was registered on the written complaint of Hardev Singh that on that day i.e. 27th August, 2008 at about 5.00 p.m. he alongwith other persons was standing in front the house of Amandeep Kaur. In the meantime, Harjit Singh @ Jit and Pappu Singh son of Roop Singh came there and raised lalkara that they should not go scot-free and they would taught them a lesson. They were followed by Gurdip Singh son of Niranjan Singh, who was armed with *gandasa*, Surjit Singh alias Billu armed with a pistol while Bhanta Singh and father-in-law of Jeet Singh alias Harjit were empty handed and they started uprooting the *safeda* trees planted in the disputed land. When they were dissuaded from doing so, they all attacked on them. Surjit Singh alias Billu fired form the pistol and threatened with dire consequences. In the meantime, the father-in-law of Jeet Singh grappled with him. Gurdeep Singh aforesaid aimed a *gandasa* blow from the sharp side on his head, but he raised his left hand to save himself as a result of which *gandasa* hit on his left palm. Gurdip Singh also gave another *gandasa* blow on his head. He raised alarm of, “killed, killed” and fell down. When Amandeep Kaur daughter of Buta Singh

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aforesaid stepped forward to rescue him (complainant), Bhanta Singh and his son grappled with her and gave kick blows and fist blows to her. In the meantime, a large number of people from the village collected there and after seeing them they all ran away from the spot.

(3) After registration of a case, the investigation was carried out and statements of the witnesses were recorded and after completion of the investigation, challan was presented against accused Harjit Singh and Gurdip Singh. During the course of trial, an application under Section 319 Cr.P.C. was moved for summoning Pappu, Bhanta Singh, Bagga Singh, Surjit Singh and Gurcharan Singh which was dismissed by the learned trial Court.

(4) I have heard learned counsel for the petitioner and have gone through the record.

(5) Learned counsel for the petitioner has argued that the persons sought to be summoned as additional accused were named in the FIR but the prosecution has put their names in column No. 2 of the challan and as during the course of trial, the aforesaid persons have also been specifically named, therefore, there was sufficient material on record to proceed against the respondents to face trial for an offence under Sections 323, 324, 506, 34 IPC but the learned trial Court has overlooked all this material evidence available on record and has wrongly dismissed the application and as such the impugned order is liable to be set aside.

(6) I have given my thoughtful consideration to the arguments advanced by the learned counsel for the petitioner, but the same are liable to be rejected.

(7) In the present case, as per the prosecution version Gurdeep Singh gave a *gandasa* blow on the back side of the head of the complainant and on his raising hue and cry Amandeep Kaur came to rescue him and Banta Singh and his son grabbed her and they gave kick and fists blows to her. Admittedly, after thorough investigation the accused Hardeep Singh and Gurdeep Singh were challaned while the names of the remaining persons were put in column No. 2. Moreover, no injury is attributed to the persons sought to be summoned under Section 319 Cr.P.C. Statement that persons sought to be summoned have given kick and fists blow seems to be highly

doubtful and ambiguous. Tendency to implicate all the near and dear of the accused cannot be ruled out. The learned trial Court has rightly observed that even if all the oral as well as documentary evidence, available on the record, be taken into consideration then also it would not lead to conviction of the persons sought to be summoned as additional accused under Section 319 Cr.P.C. and as such finding no sufficient evidence against them the trial Court has rightly dismissed the application under Section 319 Cr.P.C.

(8) In the opinion of this Court, power under Section 319 of the Code must be invoked with great caution and very sparingly when Court is satisfied that strong and sufficient evidence is available on the record and further if such evidence stand unrebutted would lead to the conviction and further Court finds that joint trial would be just and proper. Power under Section 319 of the Code should not be exercised on the basis of vague, ambiguous or flouting statements made by prosecution witnesses.

(9) This Court in the matter of **Shivraj Singh versus State of Haryana and others, Crl. Revision No. 1551 of 2010, decided on 17th February, 2011** having placed reliance on the various judgments of the Hon'ble Apex Court has held as under :—

“From the perusal of the judgments of the Apex Court (*supra*), it can safely be held that power under Section 319 of the Code can be exercised only when from the evidence available on the record involvement of the accused is found by the Court and evidence so led before the Court if stands unrebutted would result in the conviction of the accused sought to be summoned. However, mere suspicion about the involvement of the accused to be summoned from the evidence available on record would not justify the exercise of power under Section 319 of the Code. Power under Section 319 of the Code is the discretionary power and should be used very sparingly with great care and caution.”

(10) After going through the records, I find that there is no illegality, jurisdictional error or infirmity in the findings of the Court below.

(11) As a sequel of my above discussion, there is no merit in this revision petition and the same is hereby dismissed.