
(2018) 08 P&H CK 0345

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 3867, 3941 Of 2017

Bakhshish Singh Sarpanch

APPELLANT

Vs

State Of Punjab And Another

RESPONDENT

Date of Decision : 06-08-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161, 173, 319
Indian Penal Code, 1860 — Section 34, 302

Citation : (2018) 4 RCR(Cri) 164

Hon'ble Judges : Arvind Singh Sangwan, J

Bench : Single Bench

Advocate : Sameer Sachdev, G.S. Saini, Narinder Singh Pawar

Final Decision : Dismissed

Judgement

Challenge in both the revision petitions is to the order dated 20.09.2017 vide which, petitioner-Bakshish Singh, Sarpanch, was summoned as an additional accused while partly allowing the application under Section 319 Cr.P.C. and partly dismissing the application qua Sulakhan Singh.

Brief facts of the case are that on the complaint of one Mohar Singh, FIR No. 112 dated 25.09.2016 was registered under Section 302/34 IPC with the allegations that the complainant is agriculturist and was married with one Nirmal Kaur. He is having two brothers, namely, Maura Singh and Gurlal Singh. Father of complainant, namely, Sulakhan Singh, had given his share of land on lease and 6 kanals land was divided in three brothers and the complainant has sown fodder grass on his share of 2 kanals of land. Later on, Sulakhan Singh started claiming return of 1/4th share out of 06 kanals of land, as two other brothers of the complainant stated that they will revert back 1/4th share out of total land to their father Sulakhan Singh, whereas the complainant refused as the said share of the father was already given to him. On 25.09.2016, his brothers Maura Singh and Gurlal Singh alongwith their father Sulakhan Singh, accompanied by Bakshish Singh, Sarpanch, reached the agricultural land to plough the same with

a tractor, where the complainant has sown fodder grass. On coming to know, the complainant alongwith Nirmal Kaur, has reached at the spot and stood in front of the tractor. The tractor was driven by Maura Singh. Then, Bakshish Singh, Sarpanch, raised a voice if they did not stay away, move the tractor towards them. In the meantime, Nirmal Kaur, came in front of the complainant. Maura Singh suddenly, moved the tractor on Nirmal Kaur, who fell down and the rear wheel of the tractor run over her and she was trapped in the cultivator and Maura Singh, by moving the tractor forward, caused injuries to her and the complainant saved her from the clutches of the cultivator. Nirmal Kaur suffered many injuries on various parts of her body and the complainant when took her to Civil Hospital Makhu, the doctor declared her brought dead. It is further stated that on account of the dispute of giving share to the father, the accused persons have killed Nirmal Kaur, wife of the complainant.

Thereafter, the police conducted the investigation and found Bakshish Singh, Sarpanch and Sulakhan Singh innocent and submitted the report under Section 173 Cr.P.C. against accused Maura Singh and Gurlal Singh. The trial Court, thereafter, framed charges against the two persons under Section 302/34 IPC, vide order dated 11.05.2017. Complainant- Mohar Singh appeared as PW1 before the trial Court and deposed in the line of version given in the FIR. In his statement as PW1, he petitioner deposed as under:-

"PW-1 statement of Mohar Singh aged about 36 years son of Sulkhan Singh son of Jag Singh, Agriculturist, resident of village Soodan, Tehsil Zira District Ferozepur (on SA). Stated that we are three brothers, Eldest is Moura Singh, younger to him is Gurlal Singh and I am the youngest. I was married to Nirmal Kaur daughter of Shabeg Singh, resident of Sadar Kot, District Moga. I am having two sons. Elder is 8 years of age and younger is 4 years of age. The partition of cur land had taken place between three brothers and my father Sulkhan Singh. 2 Kanal of land of village Soodan fell into my share had sown fodder crop in my 2 kanal land. My father used to say that he will take his share out of this 2 kanal land and my brothers also used to say so. I told them that share of my father Sulkhan Singh has already been given to him. My father used to give share of his land on lease. On 25.09.2016 at about 5.30 PM, my brother Moura Singh, Gurlal Singh my father Sulkhan Singh alongwith Bakshish Singh, Sarpanch of village Soodan, came in my fields on tractor make Mahindra 495 equipped with cultivator to plough my fodder crop and Bakshish Singh Sarpach was having a pistol at that time. When I came to know about the same, I alongwith my wife Nirmal Kaur reached at the spot and we requested them not to plough my fodder crop. Mour Singh accused was driving the tractor. Bakshish Singh while brandished his pistol in the air and raised lalkara that if they are not going aside, then ran the tractor over them. At the instigation of Bakshish Singh Sarpanch, Mour Singh with intention to kill us ran the tractor over from my wife Nirmal Kaur. Accused Mour Singh dragged my wife with tractor and rear tyre of the tractor ran over the chest of my wife. My wife was trapped into the cultivator. Gurlal Singh caught hold me. Engine of the tractor stopped after going a little

ahead Bakshish Singh Sarpanch, Gurlal Singh and Sulkhan Singh were raising lalkaras that they be killed by running the tractor over them. I raised noise "MAR DITA MAAR DITTA", the people gathered there. Accused left the spot alongwith their weapons and left the tractor at the spot. I released my wife from the cultivator. My wife received injuries on her forehead, right bicep and left forearm. I arranged the vehicle and got her admitted in Civil Hospital, Makhu, where doctor informed me that my wife has died. Motive behind the occurrence is that Mour Singh, Gurlal Singh, Sulkhan Singh and Bakshish Singh wanted to forcibly take share of my land i.e. 2 kanals and they tried to plough my fodder crop sown in my share and when we tried to stop them, Mour Singh, Gurlal Singh and Sulkhan Singh in connivance with each other and on the instigation of Bakshish Singh Sarpanch, Mour Singh ran over tractor over from my wife Nirmal Kaur. I do not know whether my statement was recorded by the police or not. Again said my statement was recorded by the police which is Ex.P1 and I identify my statement was recorded by the police which is Ex.P1 and I identify my signatures on the same at point A. Thereafter police inspected the place of occurrence in my presence and took into possession pair of chappals vide memo Ex.P2. Police also took into possession tractor Mahindea alongwith cultivator vide Memo Ex.P3, which also bear my signatures. Sulkhan Singh, Bakshish Singh Sarpanch and wife of Gurlal Singh namely Manpreet Kaur under the deep rooted conspiracy, got registered a false case FIR No. 125 against me at Police Station Makhu just to pressurize me. The copy of which I have brought today in the court. After enquiry, police found the said case to be a false one. Bakshish Singh, Sulkhan Singh and Manpreet Kaur wife of Gurlal Singh moved application for conducting enquiry in the present case. During that enquiry, I came to know that Bakshish Singh Sarpanch moved an application to DSP Variyam Singh. After that Bakshish Singh Sarpanch scuffled with me in the month of October, 2016 and thereafter in the month of December 2016, he alongwith other persons threatened me with his pistol and told me that he had paid money to DSP Variyam Singh and he will get himself declared innocent in the present case and he will kill me due to registration of present FIR against him. I moved an application regarding the same and I have brought copy of the same today. I also moved an application to IG Zone Bhatinda to get transferred the enquiry to some other police officer as DSP Variyam Singh had already connived with accused party. When DSP Variyam Singh and Bakshish Singh came to know about the same, DSP Variyam Singh completed the enquiry within 2-3 days and declared Bakshish Singh and Sulkhan Singh innocent after taking money from them. I also filed a Writ Petition in Hon'ble Punjab and Haryana High Court in this regard, which is still pending. I identify accused Maura Singh and Gurlal Singh in the court today. Rest of the accused are not present today.

Further examination in chief deferred as learned Additional Public Prosecutor has filed an application under Section 319 Cr.P.C."

Thereafter, the prosecution moved an application under Section 319 Cr.P.C. for summoning Bakshish Singh, Sarpanch, as an additional accused.

The application was contested by accused persons, who are facing the trial and the trial Court, vide impugned order dated 20.09.2017 partly allowed the application, thereby summoning Bakshish Singh, Sarpanch as an additional accused and dismissing the same qua Sulakhan Singh. CRR-3867-2017 has been filed by petitioner-Bakshish Singh challenging the impugned order, vide which he has been summoned as an additional accused and CRR-3941-2017 filed by petitioner/complainant-Mohar Singh challenging the summoning order vide which, the application qua Sulakhan Singh was dismissed.

Counsel for petitioner Bakshish Singh, Sarpanch, has argued that the trial Court has passed the impugned order without even affording an opportunity to the accused persons to cross-examine PW1 and, therefore, the summoning of the petitioner only on the basis of examination-in-chief of PW1 is not sustainable. Counsel further argued that the petitioner is the Sarpanch of the village and had no direct role in the family dispute of the complainant with his real brothers and father regarding the partition of the land which was given by father Sulakhan Singh, as per the version given in the FIR itself. Counsel further argued that except for the allegation that the petitioner has provoked the accused Maura Singh and Gurlal Singh, to run over the complainant and his wife Nirmal Kaur by the tractor, no overt act is attributed.

Counsel further submits that during investigation conducted by DSP, Sub-Division, Zira, District Ferozepur, 15 persons of the village including members of Panchayat, Ex-members of Panchayat and other respectables, have appeared and stated that petitioner- Bakshish Singh, Sarpanch, was part of Panchayat which was convened for doing measurement of the land on the asking of parties regarding their inter-se dispute and during that period, the complainant and his wife Nirmal Kaur started abusing the Panchayat people. The Panchayat member, after doing measurement, left the field and went to their village by informing that they should call their relatives for resolving the dispute. The inquiry officers from the side of the complainant recorded the statement of the complainant and no other witness was produced by him.

Counsel further argued that as per the Investigation Report, it is found that Sulakhan Singh son of Jag Singh, Gurlal Singh son of Sulakhan Singh and Bakshish Singh, Sarpanch are innocent which was verified by the various persons who made statement under Section 161 Cr.P.C. He has further submitted that statement made by petitioner-Mohar Singh as PW1 is nothing but reiteration of the statement given before the police and rather he has made improvement in the same.

Counsel for petitioner-Bakshish Singh, Sarpanch, has relied upon judgment of Hon'ble Supreme Court titled as Hardeep Singh vs. State of Punjab, 2014 (1) R.C.R.(Criminal) 623, wherein it has been held as under:-

110. We accordingly sum up our conclusions as follows: Question Nos.1 & III Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND Q.III Whether the word "evidence" used in Section 319

(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused.? Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No. II Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course

of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No.V Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not chargesheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398Cr.P.C. has to be complied with before he can be summoned afresh.

The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove.

Counsel further relied upon judgment of Hon'ble Supreme Court titled as Brijendra Singh and others vs. State of Rajasthan, 2017 (3) R.C.R.(Criminal) 374, wherein it has been held as under:-

"In order to answer the question, some of the principles enunciated in Hardeep Singh's case may be recapitulated: Power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some 'evidence' against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.

When we translate the aforesaid principles with their application to the facts of this case, we gather an impression that the trial court acted in a casual and cavalier manner in passing the summoning order against the appellants. The

appellants were named in the FIR. Investigation was carried out by the police. On the basis of material collected during investigation, which has been referred to by us above, the IO found that these appellants were in Jaipur city when the incident took place in Kanaur, at a distance of 175 kms. The complainant and others who supported the version in the FIR regarding alleged presence of the appellants at the place of incident had also made statements under Section 161 Cr.P.C. to the same effect. Notwithstanding the same, the police investigation revealed that the statements of these persons regarding the presence of the appellants at the place of occurrence was doubtful and did not inspire confidence, in view of the documentary and other evidence collected during the investigation, which depicted another story and clinchingly showed that appellants plea of alibi was correct.

This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the 'evidence' recorded during trial was nothing more than the statements which were already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.

As a consequence, this appeal is allowed setting aside the order of summoning the appellants under Section 319 Cr.P.C."

Counsel for the petitioner-Bakshish Singh, Sarpanch, thus submitted that the prosecution has failed to prove on record any material except the reiteration of the version given by the complainant before the police. He further submits that it is also held by Hon'ble Supreme Court that material/evidence collected by the Investigating Officer at the stage of inquiry can also be utilized for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. It is further stated that since the power under Section 319 Cr.P.C. is an extraordinary power, the same can be exercised sparingly and only in the cases where the circumstances of the case so warrants. The degree of

satisfaction has to be more than the degree which is warranted at the time of framing of the charges against the others accused against whom the charge sheet was filed.

It is thus submitted that in the absence of strong and cogent evidence, the trial Court has wrongly allowed the application under Section 319 Cr.P.C. against the petitioner solely on the ocular version given by complainant as PW1.

In reply, counsel for petitioner- Mohar Singh (complainant in the FIR) submitted that from the statement of Mohar Singh (PW1) not only it is proved that Bakshish Singh, Sarpanch, was involved in the commission of crime but Sulkhan Singh also conspired and actively participated in the commission of the offence. He further argued that there is no ambiguity in the statement of Mohar Singh made before the police, forming basis of the FIR as well as while deposing in the Court as PW1 and he has specifically assigned the role to Bakshish Singh, Sarpanch at whose instigation, accused Maura Singh with an intention to kill the complainant and his wife and ran over the tractor on Nirmal Kaur. Counsel further argued that Sulkhan Singh was also raising lalkara that they be killed by running the tractor over them and, thereafter, prayed that Sulkhan Singh be also summoned as an additional accused and the revision petition filed by Bakshish Singh, Sarpanch, be dismissed.

Learned State counsel has filed reply by way of affidavit of DSP, Zira, District Ferozepur and in the reply, it is stated that after registration of FIR, accused Maura Singh and Gurlal Singh were arrested on 30.09.2016 and during investigation, no evidence came on file against Bakshish Singh, Sarpanch and, therefore, he was declared innocent. It is further stated that Sulkhan Singh was also declared innocent and the challan was presented against Maura Singh and Gurlal Singh under Section 302 IPC on 23.12.2016.

Learned State counsel has filed custody certificate of Maura Singh to show that he is in custody for the last 01 year, 09 months and 22 days.

After hearing counsel for the parties, I find merit in the revision petition filed by Bakshish Singh, Sarpanch for the following reasons:-

a. A perusal of the FIR and the statement made by complainant Mohar Singh (PW1) is verbatim the same. In the inquiry conducted by DSP, it has come that from the side of complainant Mohar Singh, he appeared as the sole witness whereas from the side of petitioner-Bakshish Singh, Sarpanch, as many as 15 persons including Panches and Ex. Panches of the village appeared to depose that in fact a Panchayat was convened to resolve the dispute between the father and two sons, on one side and other son (Mohar Singh complainant) on the other side, where at the time of measurement at the spot, the complainant and his wife started abusing them and the Panchayat left the place by informing that they should resolve the dispute by calling their relatives. Bakshish Singh, Sarpanch, was also present in the Panchayat.

b. Thus, Bakshish Singh, Sarpanch, being part of the Panchayat, in order to explore the possibility of some settlement between the father and the sons, was performing his duty. The incident which occurred later in the day was thoroughly investigated by DSP, Zira and his inquiry report was upheld by SSP, Ferozepur, wherein it has been held that the petitioner-Bakshish Singh, Sarpanch has no role in the commission of the alleged offence by Maura Singh and his brother Gurlal Singh, who are none other than the real brothers of complainant Mohar Singh and all of them were having a land dispute. From the statement of PW1, it could not be gathered that petitioner-Bakshish Singh, Sarpanch, had a prior meeting of mind with accused Maura Singh in committing murder of Nirmal Kaur.

c. So far as, the revision petition filed by petitioner-Mohar Singh (complainant) is concerned, the trial Court has rightly held that Sulkhan Singh (father of the complainant and accused) is an old person and there is no sufficient evidence to summon him as an additional accused. The trial Court has rightly recorded a finding that no overt act has been attributed to Sulkhan Singh and his mere presence at the spot cannot be termed as an act of participation in the crime, which was committed by Maura Singh by driving the tractor and running over the deceased Nirmal Kaur.

In view of the judgments of Hardeep Singh (supra) and Brijendra Singh and others (supra), I find that the prosecution has failed to lead sufficient evidence which is strong and cogent enough to record a finding that the degree of satisfaction is more than the degree which is warranted at the time of farming of charges against whom the report under Section 173 Cr.P.C. was filed. The trial Court has not given any reason to discard the investigation report of the DSP which was upheld by SSP,

Ferozepur, after recording the statement of 15 respectables of the village including panches and Ex-Panches to record a finding that petitioner-Bakshish Singh, Sarpanch is innocent person.

For the reasons stated above, the revision petition filed by Bakshish Singh, Sarpanch, is allowed and the impugned order dated 20.09.2017 is set aside. Accordingly, the revision filed by petitioner-Mohar Singh is dismissed.