
(2011) 02 P&H CK 0340

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 1551 of 2010 (O and M)

Shivraj Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 148, 149, 302, 324, 427

Citation : (2011) 02 P&H CK 0340

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Alok Singh, J.—Present petition is filed challenging order dated 31.03.2010 passed by learned Sessions Judge, Sirsa, thereby declining the request of the complainant to summon private Respondent Nos. 2 to 6 u/s 319 of the Code of Criminal Procedure to face trial in Sessions Case No. 113-SC of 2008.

2. Inter-alia, prosecution story is that Shivraj Singh-complainant along with some other persons of his community were going to Gurudwara Singh Sabha, Dabwali, for paying obeisance and when they reached near the house of Sunder Dass accused where Naam Charcha was being held, accused Sunder Dass etc. attacked the complainant and his companions resulting in death of Harmander Singh and injuries to Shivraj Singh-complainant. Matter was reported to the police. Investigation was carried out. The persons now sought to be summoned as accused were found innocent and were not challaned. On completion of investigation, challan was presented in the Court and charge under Sections 148, 302/149, 324/149 and 427 IPC was framed against accused Sunder Dass and others. Shiv Raj Singh-complainant has stated before the police as under:

I am resident of the above said address and is President of Guru Granth Sahib Sabha, Block Mandi Dabwali. Today, I and Mander Singh son of Mahender Singh resident of village Dabwali and Jasbir Singh son of Kaku Singh Prajapat, resident

of Saleem Khera, Police Station Odhan and Shivraj son of Balwant Singh, Caste Jat Sikh, resident of Village Alikan were traveling in my gypsy as per daily routine to pay the obeisance to Gurudwara Singh Sabha time at about 6.30 PM in the evening when our vehicle reached near Padri School, Near Bus Stand, then Naam Charcha (Satsang) were going on at the house of Sunder Singh, Amarjit Singh, Darshan Singh, Vandiwala, Jagtar Singh, Surender Singh, Narender, Mander Singh, Sunder Dass Mehta and the son whose father's name I do not know were standing. I know these persons earlier, who said that, there is order of our father that you cannot pass from this street. So we closed the glasses of vehicles. They were more persons and broken the glass of our gypsy with sticks and iron rods and forcibly took us (four persons at the place of Satsang). Gurjant Singh got hold on the hairs of Harminder Singh and Sunder Dass caught hold on legs and Mander Premi gave a blow on the head of Harminder Singh and Amarjit Premi gave a blow of rod on my head and Darshan Singh gave a blow of big stone to Jasbir, when hit as the head and injuries were also given to fourth person Shivraj Singh. All the persons at there were having brick bats, sticks and iron rods and gave the injuries. Harminder Singh died at the spot. When we after releasing tried to run away all the premis (Dera followers) threatened that one we have killed and we will also kill you. They damaged our gypsy and rolled over....

3. After investigation, police has submitted challan against the five accused i.e. Sunder Dass, Gurjant Singh, Harmander Singh, Jagtar Singh and Gurdeep Singh. The case was committed for trial to the Sessions Court. Before the Sessions Judge, from the prosecution side, 13 witnesses were examined. PW13 was Shivraj Singh son of Malkiat Singh-complainant. He has stated on oath that when he along with others were going on the street leading towards Padri School, Dabwali, 10 persons standing in the street. Out of those 10 persons, Gurjant Singh, Sunder Dass, Mander, Gurdeep and Jagtar are present in Court; while Surender (Respondent No. 4), Narender (Respondent No. 5), Darshan (Respondent No. 3), Suresh (RespondentNo. 6) and Amarjit (Respondent No. 2) are not present in the Court, but were present along with the accused in the street at that time and all 10 accused have asked the complainant and his party not to go ahead as there was order of their Pitaji not to allow Sikh gentlemen to pass in the street as they had arranged Naam Charcha. Since, they had to go to Gurudwara falling ahead in the street, Complainant party shut down the window panes of the gypsy. All the accused were armed with iron rods and lathies and broken the window panes of the gypsy and dragged the complainant party out and overturned the gypsy. They took the complainant party towards the house of Sunder Dass accused where Naam Charcha was in progress; Gurjant Singh accused caught Mander (since deceased) by his hair and Sunder Dass had caught legs of Mander Singh and accused Mander then gave blows of iron rod on the head of Mander, who later on succumbed to his injuries; Darshan Singh (Respondent No. 3) hit Jasbir Singh with brick stone. Amarjit (Respondent No. 2) dealt a blow with iron rod on left side of complainant's forehead and thereafter,

all the accused jointly assaulted the complainant party with their respective weapons. All the accused proclaimed that they had killed one person Mander and have threatened to kill the complainant party as well. Running from the spot, complainant anyhow reached Government Hospital where his wounds were stitched and dressed.

4. Learned Sessions Judge vide impugned order has observed as under:

It is established on record that PW-13 Shivraj Singh is block level head of Guru Granth Sahab Satkar Sabha, Mandi Dabwali and has been opposing holding of Naam Charcha at various places and is involved in criminal cases. Though Harmander Singh unfortunately died due to assault or self-defence by Sunder Dass, etc. yet in my considered opinion, the evidence on record, is not likely to lead to conviction of the accused sought to be summoned and therefore, no case is made out for summoning Amarjit son of Karnail Singh, Darshan Singh son of Sadhy Singh, Surender son of Balwant Rai, Narender son of Sham Lal, Suresh son of Sunder Dass, all residents of Mandi Dabwali, District Sirsa as additional accused.

5. I have heard learned Counsel for the parties and have perused the record.

6. Hon''ble Apex Court in the matter of Ram Pal Singh and Ors. v. State of U.P. and Anr. 2009 (2) RCR 131, in paragraph Nos. 15 and 16 has observed as under:

15. The ingredients of Section 319 are unambiguous and indicate that where in the course of 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 he has committed.

16. All that is required by the Court for invoking its powers u/s 319 Code of Criminal Procedure is to be satisfied that from the evidence adduced before it, a person against whom no charge had been framed, but whose complicity appears to be clear, should be tried together with the accused. It is also clear that the discretion is left to the Court to take a decision on the matter.

7. Hon''ble Apex Court in the matter of Suman v. State of Rajasthan and Anr. 2010 (1) CCC 269 (S.C.), in paragraph No. 11 has held as under:

11. Section 319 Code of Criminal Procedure applies to all the Courts including the Sessions Court. It 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. If such person is not attending the Court, he can be arrested or summoned. If he is attending the Court, although not under arrest or upon a summons, he can be detained by such Court for the purpose of inquiry into, or trial of the offence which he appears to have committed. Sub-section (4) lays down that where the Court proceeds against any person under Sub-section (1), the proceedings in respect of such person shall be commenced afresh and

witnesses are reheard. A reading of the plain language of Sub-section (1) of Section 319 Code of Criminal Procedure makes it clear that a person not already an accused in a case can be proceeded against if in the course of any inquiry into or trial of an offence it appears from the evidence that such person has also committed any offence and deserves to be tried with other accused. There is nothing in the language of this Sub-section from which it can be inferred that a person who is named in the FIR or complaint but against whom charge-sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence the Court finds that such person has committed any offence for which he could be tried together with the other accused.

8. Hon''ble Apex Court in the matter of Sarabjit Singh and Another Vs. State of Punjab and Another, , in paragraph No. 17 has observed as under:

17... An order u/s 319 of the Code, therefore, should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction.

For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

9. Hon''ble Apex Court in the matter of Michael Machado and Another Vs. Central Bureau of Investigation and Another, in paragraph Nos. 11 and 12 has observed as under:

11. The basic requirement 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 other persons.

10. From the perusal of the judgments of the Apex Court (supra), it can safely be held that power u/s 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 u/s 319 of the Code. Power u/s 319 of the Code is the discretionary power and should be used very sparingly with great care and caution.

11. I have perused the statement of Shivraj Singh-complainant (PW13). No doubt, he has stated that private Respondents were also present on the spot along with the other co-accused already facing trial. No doubt, he has further stated that all of them have broken the window panes of the gypsy of the complainant party, however, he has not stated that any of the private Respondents has caused any fatal injury on the body of Mander Singh deceased. However, he has stated casually that all the accused jointly assaulted with their weapons etc., as to who out of the present Respondents has caused what injury, is not specifically stated. Statement of the complainant if stand unrebutted, in the opinion of this Court would not result in the conviction of the private Respondents because none of them were said to have caused any injury on the body of the deceased or on the person of the injured complainant except Respondent No. 2 who is said to have given blow with iron rod on the left side of the forehead of the complainant which does not corroborate with the medical evidence. Statement of PW13 creates a suspicion about the involvement of the private Respondents, however, discretionary power u/s 319 of the Code as held herein above should not be exercised merely on the basis of suspicion.

12. In view of this, I do not find any reason to take contrary view. Revision petition fails and is dismissed.