
(2018) 07 P&H CK 0268
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 2626 Of 2014

Sugreev Kumar

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 02-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 341

Arms Act, 1959 — Section 25

Code Of Criminal Procedure, 1973 — Section 161, 319

Citation : (2018) 07 P&H CK 0268

Hon'ble Judges : Surinder Gupta, J

Bench : Single Bench

Advocate : T.S. Sangha, S.S. Sidhu, Sandeep Kumar, J.S. Bedi, Akashdeep Singh, Sukhtej Singh, Amit Rana

Final Decision : Dismissed

Judgement

Surinder Gupta, J

1. This is revision against order dated 24.07.2014 passed by Additional Sessions Judge, Fazilka, whereby application filed by prosecution to summon

respondents no. 2 to 8 and Sonu son of Jai Pal was partly allowed. While Sonu son of Jai Pal was ordered to be summoned as accused to face trial for

offences punishable under Sections 302, 307 and 341 read with Section 34 of Indian Penal Code and 25 of the Arms Act, application qua respondents

no. 2 to 8 was dismissed.

2. FIR (Annexure P-1) in this case was registered on the statement of Manohar Lal, which reads as follows:-

Statement of Manohar Lal son of Hanuman Ram caste Bishnoi resident of Raipura P.S. Sadar Abohar aged about 35 years stated that I am

resident of above said address and is agriculturist. We are three brothers. Sugreev is the elder and younger to him is Sandeep and I. About 4 years

back my father namely Hanuman Ram got purchased 9 ½ acres of land from Seth Mohan Lal son of Mokham Chand resident of Fazilka at village

Raipura. On that land Dalip son of Hari Ram Parjapat and others were having possession as tenant but later on we came to know that the possession

of this land is purchased by Vikram son of Krishan Dev from Dalip and others through an affidavit. This land was barren because of that it always

remains uncultivated. We filed a case in the Hon'ble Court of SDM for the ejectment of tenants and same was decided in our favour and the SDM

Sahib Abohar got the tenant ejected. On dated 29.08.2013 I alongwith my brother Sandeep, Sugreev, my father Hanuman Ram, my uncle (Chacha)

Mahi Ram son of Ganpat Ram, Budh Ram son of Hazari Ram, Amar Singh son of Ram Narayan caste Bishnoi resident of Raipura and alongwith our

servant Sham Lal son of Tulsi Ram caste Balmik resident of Raipura reached our land to take possession on our Bolero Car bearing No. PB-15-A-

0053 driven by my father Hanuman Ram and my brother Sandeep Kumar was sitting on the front seat alongwith my father and rest of the persons

were sitting behind. Then the halqua kanungo and patwari, who have to come to spot had not reached there. To bring them to spot we were coming

back to our village in our car at about 3.30 pm.

When we reached on uncultivated sand dune (tibba) near the colony of our village three vehicles one Innova bearing no. PB-15-F-7329, Bolero and

one Swift Car colour white came from the village side. Vikram Gilla son of Krishan Dev armed with 315 bore licence rifle, Vikas son of Krishan Dev

armed with licenced pistol and Krishan Dev son of Manohar Lal armed with licenced pistol all resident of Raipura alighted from those vehicles

accompanied by 10/12 unidentified persons armed with dangs, sotas and swords, while one person was having 12 bore gun. I can identify those 10/12

persons, if they come in front of me. Vikas exhorted that we shall be taught a lesson for purchasing land and taking possession and the persons armed

with weapons fired upon us. Vikram Gilla fired straight at my brother Sandeep and upon my father from his rifle and other armed persons also fired at

our Bolero car which hit my father, my brother Sugreev, my uncle Mahi Ram, Budh Ram, our servant Sham Lal and my brother Sandeep Kumar and

they got injured. The occurrence was witnessed by me. The assailants, using their weapons, kept us cordoned. We raised the alarm â??Marta

Martaâ? at which all the accused fled away from the spot alongwith their respective weapons and vehicles. Thereafter, I brought my brother, father,

uncles and servant in vehicle at Civil Hospital, Abohar for treatment where doctor sahib declared Sandeep Kumar as dead. My father Hanuman and

my brother were referred to Medical College, Faridkot by doctor as their condition was serious and started the treatment of others at Civil Hospital,

Abohar.â??

3. After investigation police presented the challan against accused Vikram Gilla, Gurmeet Singh and Sunil while respondents no. 2 to 8 were found

innocent and not challaned.

4. At the very out set learned counsel for the petitioner has confined the relief claimed in this petition only qua respondents no. 2 and 3 i.e. Krishan

Dev and Vikas son of Krishan Dev and has opted not to challenge the impugned order qua respondents no. 4 to 8.

5. Learned counsel for the petitioner has argued that complainant-Manohar Lal in his statement recorded by the police has specifically named Krishan

Dev and his son Vikas. As per version of complainant, Vikram Geela accompanied by respondents no. 2-Krishan Dev and 3-Vikas armed with

rifle/pistol came to the spot alongwith 10/12 unidentified persons, who were armed with dangs, sotas, swords and one person was having 12 bore gun.

On lalkara of Vikas to teach lesson for purchasing the land and taking its possession, persons armed with weapons fired at the complainant party.

While Vikram Gilla has been specifically named for firing shots at father and brother of complainant, it was alleged that other persons fired at Bolero

car of complainant and at his father, brother-Sugreev, uncles Mahi Ram, Budh Ram, servant Sham Lal and brother-Sandeep Kumar. As per version

of complainant, Krishan Dev and Vikas were armed with weapons and it is clear from his statement that they had fired at complainant party resulting

in death of two persons and injuries to several persons. The trial Court has committed grave error while declining to summon Krishan Dev and Vikas

with the observation that they have been attributed lalkara only. Both Krishan Dev and Vikas were identified at the spot, named in the FIR and were

attributed gunshot injuries to complainant party. They have set up the plea of

alibi, which was not looked into by the trial Court with the observation that it is a matter to be seen at the stage of defence evidence. He has submitted that there is ample evidence on record to summon Kishan Dev and Vikas. Though, trial of main case has reached the final stage, both these accused can be ordered to be tried separately.

6. Learned counsel for respondents no. 2 and 3 has argued that the complainant has named Krishan and his son Vikas only with a view to falsely

implicate them in this case. Admittedly, there is land dispute between the parties. Both these persons have been attributed lalkara. As per complainant,

Vikas had raised lalkara that complainant party be taught lesson for purchasing and taking possession of the disputed land. Learned trial Court has

taken note of this fact that possession of the land had not been taken by complainant party. Both these persons were 650 kms. away from the place of

occurrence and the police during investigation has collected evidence in this regard and in the report, copy of which has been placed on record as

Annexure R-2/1, it has been observed that both these persons were not present at the spot. Though, learned trial Court has observed that the plea of

alibi can be set up in defence but keeping in view the fact that the police on the basis of evidence and documents has found the plea of Krishan Dev

and Vikas as correct that on the day of occurrence, they were present in Bhilwara (Rajasthan), order of trial Court declining the application of

complainant to summon Krishan Dev and Vikas cannot be assailed on mere statement of complainant, which is just repetition of his statement

recorded by the police during investigation.

7. The petitioner in his application (Annexure P-4) had sought to summon eight persons including Sonu son of Jai Pal as additional accused. The

application to summon Sonu son of Jai Pal was allowed while remaining persons named in the FIR, now arrayed as respondents no. 2 to 8, were not

summoned. Learned counsel for the petitioner has not pressed the application filed before the trial Court to summon respondents no. 4 to 8 and has

pressed the same only for summoning Krishan Dev and Vikas (respondents no. 2 and 3), who were named in the FIR. While declining the application

the trial Court has observed that they appear to have been implicated falsely for the reasons that they have been attributed lalkara for teaching lesson

for taking possession of the land, which admittedly had not been taken by the

complainant party.

8. On perusal of paper-book, I find that while reasoning as given by learned trial Court could not be assailed still there is another reason on record,

which though was not taken into account by learned trial Court, make out no case for summoning of respondents no. 2 and 3 i.e. Krishan Dev and

Vikas as additional accused.

9. Admittedly, there was land dispute between the parties, which led to present occurrence. The complainant alleged presence of Vikas son of

Krishan Dev and Krishan Dev at the time of occurrence. However, the police on investigation has found that on the day of occurrence they were

present at Bhilwara (Rajasthan). Report to this effect was submitted. It will be appropriate to refer to relevant part of the report (Annexure R-2/1),

which reads as follows:-

“From the inquiry, it has been found that Krishan Dev s/o Mohan Lal and his son Vikas s/o Krishan Dev, residents of Raipura, presently residing at

Sancheti Colony, Bhilwara (Raj.) were not found to have come to village Raipura on the day of occurrence. Bhilwara is at a distance of about 650

kilometers from village Raipura, which takes about 10 hours journey by car. There is no facility of going there by air. Besides, Krishan Dev and Vikas

do the business of crusher in Bhilwara and on that day also, they had done their works relating to crusher in their city Bhilwara, met a number of

people of the colony. Krishan Dev is habitual of playing volleyball every morning as an exercise and in the morning of 29.08.2013, he played volleyball

alongwith his other friends. On 29.08.2013, Vikas and Krishan Dev had made money transaction also in connection with their business vide an

affidavit and this has been corroborated from stamp vendor from whom stamp paper was purchased and notary public. Apart from this, Krishan Dev

got filled petrol in his Scorpio car no. 7329 from Garima Petroleum, village Pansal, Bhilwara on the same day and had gone to their crusher. This fact

has been verified from the labour working at the crusher and people of nearby crushers. Apart from this, on the same day, the Scorpio vehicle no. PB-

15G-7329 of Krishan Dev and motorcycle no. RJ-06SR-8888 of Vikas Bishnoi were also challaned by Police Station Pur, Distt. Bhilwara (Raj.) and

they had deposited the penalty of said traffic challans. Photocopies of affidavit, photocopy of register of stamp vendor, photocopy of receipt regarding

filling of petrol, photocopy of register of notary public and relevant statements are attached herewith.

From the inquiry conducted by me so far, Krishan Dev s/o Sohan Lal and his son Vikas, residents of Raipura, presently Sancheti Colony, Bhilwara had

not come to village Raipura, not they were involved in quarrel. Complainant has deliberately named them in the case because Krishan Dev is father of

Vikram Geela and Vikas is brother of Vikram Geela so that nobody could pursue the matter.....â??

10. Hon'ble Apex Court while defining the scope of Section 319 Cr.P.C. in case Brijendra Singh and others vs. State of Rajasthan, 2017 (3) RCR

(Criminal) 374, has observed in paras 13 to 15 as follows:-

â??13. In order to answer the question, some of the principles enunciated in Hardeep Singh's Hardeep Singh vs. State of Punjab and others, 2014 (1)

RCR (Criminal) 623, 2014 (3) SCC 92 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.

14. 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.

15. 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 was 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.â??

11. In this case, statements of complainant and witnesses is same, which were recorded by the police during investigation. Learned trial Court has

observed in its order that Vikas was attributed lalkara to the effect that complainant party be taught lesson for taking possession of the disputed land

while Sugreev (PW) had admitted in his cross-examination that possession of the disputed land had not yet been taken by them. This shows that

respondents, Krishan Dev and Vikas were arrayed as accused because of enmity between the parties and the police during investigation had collected

the evidence, which prove that both these respondents were far away from the place of occurrence.

12. Hon'ble Apex Court in case Brijendra Singh (supra) has observed that for summoning the additional accused under Section 319 Cr.P.C. degree of

satisfaction is much stricter. Power under Section 319 Cr.P.C. is discretionary and extraordinary power which is to be exercised sparingly and only in

those cases where circumstances of the case so warrants and strong and cogent evidence occurs against a person from the evidence led before the

Court and not in a casual and cavalier manner. Applying the ratio of judgment in case of Brijendra Singh (supra), which squarely covers the present

case, I find no merit in this revision petition. No case is made out for summoning respondents no. 2 and 3 i.e. Krishan Dev and Vikas as additional

accused.

Dismissed.