

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR

## O R D E R

1. S.B. CRIMINAL REVISION PETITION NO.790/2006  
(Avtar Singh vs. State & Ors.)
2. S.B. CRIMINAL REVISION PETITION NO.714/2006  
(Baldeo Singh Vs. State)

Date of order : May 31<sup>st</sup>, 2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. S.S. Dhillon, for the petitioner.  
Mr. Ashok Upadhyay, Public Prosecutor.  
Mr. M.K. Garg with  
Mr. Niranjan Singh, for the non-petitioners.

(In SB Criminal Revision Petition No.790/2006)

Mr. M.K. Garg with  
Mr. Niranjan Singh, for the petitioner.  
Mr. Ashok Upadhyay, Public Prosecutor.

(In SB Criminal Revision Petition No.714/2006)

Both the revision petitions are directed against the order dated 27.7.2006 passed by Additional District & Sessions Judge (Fast Track), Annopgarh District Sri Ganganagar in Sessions Case No.11/2006 (5/2006) whereby the application under Section 319 Cr.P.C. filed by complainant - Avatar Singh S/o Amar Singh was partly allowed and order for taking

cognizance against Baldev Singh was passed while rejecting the prayer for taking cognizance against Karam Singh S/o Mahendra Singh and Baljender Singh @ Kala S/o Kashmir Singh.

SB Criminal Revision Petition No.790/2006 has been filed by complainant - Avatar Singh for taking cognizance against non-petitioners No.2 and 3 namely Karam Singh and Baljender Singh @ Kala and for quashing the order impugned dated 27.7.2006 to the extent of rejecting prayer for taking cognizance against the aforesaid non-petitioners.

SB Criminal Revision Petition No.714/2006 has been filed by Baldev Singh against the impugned order dated 27.7.2006 whereby cognizance has been taken against him upon the application filed under Section 319 Cr.P.C. by complainant - Avatar Singh.

According to the facts inter alia narrated in the revision petitions, a FIR was registered upon 'parcha bayan' of Avatar Singh S/o Amar Singh recorded at 12.05 p.m. on 28.6.2005 by Subhash Chandra, S.I. In the FIR, it was alleged that complainant - Avatar Singh went for taking water from 'naka', at that time his neighbour Baldev Singh and his two sons Pritpal and Tejpal and Karam Singh, Amritpal Singh @ Pala S/o Karam Singh, Sonu S/o Dharm Singh, Lakhvinder Singh S/o Kashmir Singh were standing there armed with

lathis in their hands and they took him in their field and inflicted injuries by lathis. It was specifically mentioned that Tejpal Singh was having kulhari in his hand and he inflicted injury on the mouth of complainant - Avtar Singh and Baldev Singh said that shoot them. At that time, other neighbours namely Ranjeet Singh, Mani Singh, Kashmir Singh, Jarnel Singh came on spot and upon their intervention, the accused persons ran away from the place of occurrence.

Upon the aforesaid FIR, after registering the case by the Police Station Anoopgarh, investigation was commenced and after investigation, challan was filed against five accused persons but no challan was filed against Baldev Singh, Karam Singh and Balzender Singh @ Kala. After filing challan, the case was committed to the Sessions court for trial and later on the case was transferred to the Additional District & Sessions Judge, Anoopgarh, District Sri Ganganagar for trial. After framing charges against five persons, who were challaned by the Police, the statement of PW-1 Avatar Singh, PW-2 Kashmir Singh and PW-3 Ranjeet Singh were recorded and thereafter, an application under Section 319 Cr.P.C. was filed by complainant before the trial court for taking cognizance against Baldev Singh, Karam Singh and Balzender Singh @ Kala. The trial court after hearing arguments and taking into account the evidence on record rejected the prayer for taking cognizance against Karam Singh and

Balzender Singh @ kala and passed an order for taking cognizance against Baldev Singh while reaching to the conclusion that there is material on record for taking cognizance against Baldev Singh and there is no sufficient evidence to add Karam Singh and Balzender Singh @ kala to be added as accused and vide impugned order refused to take cognizance against Karam Singh and Balzender Singh @ kala.

In the revision petition filed by complainant – Avatar Singh, it is contended by the learned counsel for the petitioner that the order impugned dated 27.7.2006 is illegal and improper upto the extent of rejecting the prayer for taking cognizance against Karam Singh and Balzender Singh @ kala. It is further submitted that the learned trial court has committed an error in not taking cognizance against Karam Singh and Balzender Singh @ kala because as per the statement of PW-1 Avatar Singh, PW-2 Kashmir Singh and PW-3 Ranjeet Singh, there is sufficient evidence on record for taking cognizance against them. It is also contended that in these statements, these witnesses have specifically stated that all these three persons took active part in the incident and assaulted complainant. It is further submitted that the name of Karam Singh and Baldev Singh was mentioned in the 'parcha bayan' upon which the FIR was registered and specific allegation against Baldev was made by the complainant that he said to other accused persons to

fire and kill the complainant but the police has not filed challan against Baldev and other two persons though there was sufficient evidence for filing challan against these persons. Learned counsel for the petitioner has submitted that the order impugned dated 27.7.2006 deserves to be quashed to the extent of rejecting the prayer of petitioner - complainant Avatar Singh for taking cognizance against Karam Singh and Balzender Singh @ Kala.

It is further submitted by the learned counsel for the petitioner that the learned trial court has rightly took is cognizance against Baldev Singh because there was sufficient evidence against him.

On the other hand, learned counsel for the non-petitioners contended that after investigation by police twice, the investigating agency has come to the conclusion that there is no evidence against Baldev Singh, Karam Singh and Baljender Singh @ Kala. Therefore, challan was rightly not filed by the Police against them in absence of any evidence. Learned counsel for the non-petitioners vehemently argued that after recording of the statement of PW-1, PW-2 and PW-3, the learned trial court took cognizance against Baldev Singh but in fact in the evidence collected by the Police, no specific allegation was made against these persons. Likewise, in the statement recorded

before the court, there is material contradiction, improvement and omission, therefore, no conviction can be passed upon such type of statements, which are contrary to each other against accused persons. Learned counsel submitted that there is no material on record upon which cognizance was required to be taken. Therefore, the learned trial court has rightly rejected the prayer for taking cognizance against Karam Singh and Baljender Singh @ Kala and committed an error while taking cognizance against Baldev Singh. Therefore, it is prayed that the revision petition filed by complainant - Avatar Singh for taking cognizance against Karam Singh and Baljender Singh @ Kala deserves to be dismissed and the revision petition filed by Baldev Singh against the order of taking cognizance deserved to be allowed because there is no specific allegation against him.

Learned counsel for the petitioner has invited the attention of this Court towards certain judgments of Hon'ble Apex Court in case of Michael Machando & Anr. vs. Central Bureau of Investigation & Anr., reported in (2000) (3) SCC 262, in case of Rakesh & Another vs. State of Haryana, reported in (2001) 6 SCC 248, in case of Jarnail Singh vs. State of Rajasthan, reported in 2003 Cr.L.R. (SC) 214 and in case of Lok Ram vs. Nihal Singh Singh, reported in 2006 AIR SCW 2129 and prayed that in view of the law laid down by Hon'ble Supreme Court that the power

under Section 319 of the Code can be exercised by the Court *suo motu* or on an application by someone including accused already before it. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the particular case. So also, it has been held that the power under Section 319 Cr.P.C. is extra ordinary power, which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier.

Learned counsel for the non-petitioner has also vehemently argued that as per the verdict of Hon'ble Supreme Court, it should appear to the Court from the evidence collected that in the trial such additional person has committed offence and may be tried together with the accused already arrayed in the case. Learned counsel further argued that the Hon'ble Apex Court in case of Michael Machado & Anr. (supra) has specifically observed that the discretionary power so conferred should be exercised only to achieve criminal justice and that the court should not turn against another person whenever it comes across evidence connecting that other person also with the offence. It is further argued that the Court should satisfy after taking into account entire evidence recorded before the Court that there is sufficient chance of conviction of the accused on the said

evidence, therefore, the learned trial court has rightly considered the case of Karam Singh and Baljender Singh @ Kala and rejected the prayer for taking cognizance against them. However, the learned trial court has committed an error while taking cognizance against Baldev Singh against whom there is no evidence on record.

I have heard learned counsel for the parties and perused the record of the case.

In the present case, the trial court after recording evidence of three prosecution witnesses namely PW-1 Avatar Singh, PW-2 Kashmir Singh and PW-3 Ranjit Singh has considered the application filed by the complainant under Section 319 Cr.P.C. Admittedly, in the FIR, the name of Baldev Singh and Karam Singh was there and the name of Baljender Singh was not mentioned in the 'parcha bayan' of complainant - Avatar Singh. Likewise, no specific role was assigned to Karam Singh in the FIR, so also, before the court in the statement of PW-1, PW-2 and PW-3, no specific allegation was levelled against Karam Singh and Baljender Singh @ Kala. Learned trial court has rightly observed that no specific allegations are levelled by all the three prosecution witnesses against Karam Singh and Baljender Singh, therefore, there is no question of taking cognizance against these persons because the evidence which has come on

record, is not sufficient to arrive at with the finding of conviction. Likewise, against Baldev Singh, there is specific allegation levelled by PW-1 Avatar Singh that he was on spot and quarrel was initiated by him. However, the police has not filed challan against him. In my opinion, as per the evidence on record, the learned trial court has rightly rejected the application under Section 319 Cr.P.C. for taking cognizance against Karam Singh and Baljender Singh @ Kala while observing that there is no sufficient evidence against them after recording statement of three prosecution witnesses. The Hon'ble Supreme Court in case of Lok Ram Vs. Nihal Singh (supra) has held in para-12 as follows :

"12. Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it. If it is satisfied that any person other than accused had committed an offence he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word 'evidence' in Section 319 contemplates that evidence of witnesses given in Court. Under sub-section (4) (1) (b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of sub-section (4) (1) (b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused

is concerned."

Thus, it is clear from the aforesaid judgment that the power under Section 319 of the Code is discretionary and such discretion must be exercised judicially and trial court is required to see that there are compelling reasons exist for taking action against a person against whom action had not been taken earlier.

In view of the discussions as above, it is clear that finding of the trial court with regard to rejecting the application filed under Section 319 Cr.P.C. for taking cognizance against Karam Singh and Baljender Singh @ Kala does not require any interference by this Court and the trial court has rightly arrived at with the finding that there is sufficient evidence on record for taking cognizance against Baldev Singh against whom specific allegation was levelled in the statement of PW-1 Avatar Singh and other two witnesses before the court and in the 'parcha bayan'.

In these circumstances, I see no reason to interfere with the impugned order dated 27.7.2006 passed by Additional District & Sessions Judge (Fast Track), Anoopgarh. Accordingly, both the revision petitions are dismissed.

(GOPAL KRISHAN VYAS), J.

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