

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

--

CRR No. 2292 of 2009

Date of decision: 30.04.2010

Umed Singh

..... Petitioner

Versus

State of Haryana and Others

.....Respondent(s)

Coram: Hon'ble Ms Justice Nirmaljit Kaur

-.-

Present: Mr. K D S Hooda, Advocate
for the petitioner

Mr. Vikas Malik, Haryana
for the respondent - State

Mr. Azad Singh, Advocate
for respondent Nos. 2 to 5

-.-

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether the judgement should be reported in the Digest?

Nirmaljit Kaur, J.

This is a revision petition against the order dated 10.07.2009 passed by the learned Additional Sessions Judge, Hisar vide which application under Section 319 of the Code of Criminal Procedure for summoning the respondents No. 2 to 5 was dismissed.

Brief facts leading to the filing of present case are that on the statement of complainant Umed Singh, FIR No. 3 dated 03.01.2008 under Section 302,201,364,147,148 of Indian Penal Code, Police Station Narnaud

was registered against the accused persons for the murder of the uncle of the complainant-Daya Chand by burning him alive.

Eight persons were named in the said FIR. Karambir alias Makra son of Lala, Sunder son of Bhala were arrested. Balraj son of Chander and Sushil son of Rama were declared as Proclaimed Offenders. Whereas, Rama son of Chander-respondent No. 2, Raja son of Chander-respondent No. 3 and Babli wife of Sunder-respondent No. 4 and Sushil wife of Balraj-respondent No.5 were declared as innocent. No challan was filed against the aforesaid respondents No. 2 to 5. Thereafter, statement of eye witness Umed Singh son of Dhup singh was recorded. On the basis of the allegations in the FIR and the statement of the eye witness, an application under Section 319 of the Code of Criminal Procedure was moved by the prosecution for the summoning the other co-accused respondent Nos. 2 to 5 i.e. Rama, Raja, Babli and Sushil. However, the same was dismissed vide order dated 10.07.2009 passed by the learned Additional Sessions Judge, Hisar. Hence, the present revision has been moved by the complainant-Umed Singh against the aforesaid order.

Learned counsel for respondents No. 2 to 5, on the other hand, relied on the judgements rendered by the Apex Court in the cases of *Kailash v. State of Rajasthan and another* reported as **2008(2) RCR (Criminal) 200** and *Lal Suraj alias Suraj Singh and another v. State of Jharkhand* reported as **2009(1)RCR (Criminal) 504** to state that merely because some witnesses have mentioned the name of such persons or that there is some material against that person, the discretion under Section 319 of the Code of Criminal Procedure would not be used by the Court lightly but should be used sparingly and only if compelling reasons exist.

However, in both these cases, referred to above, the guideline was that '*a person should be summoned if only there is possibility of recording of judgement of conviction against him.*'

In the judgement of the Apex Court rendered in the case of *Ram Pal Singh and others v. State of Uttar Pradesh and another* reported as **(2009) 4 Supreme Court Cases 423**. the appellants were not named in the FIR. An application under Section 319 Cr.P.C. was rejected by the trial Court and the High Court after considering the evidence of PW1 thought it necessary for the appellants to be summoned. Aggrieved, the accused filed an appeal before the Supreme Court. Hon'ble the Supreme Court dismissed the appeal filed by the accused while holding that:-

“17. 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.

18. All that is required by the Court for invoking its powers under Section 319 Cr.P.C. 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.

19. In the instant case, although, the appellants were named in the F.I.R., they were not named as accused in the charge-sheet during the trial. However,

P.W.1 in his evidence, has named the appellants as persons who were involved in the incident causing the death of Brijesh Kumar Singh and injuries to Manvender Singh. Despite the above, the trial Court, on two separate occasions, rejected the prayer made by the Respondent No.2 for summoning the appellants herein under Section 319 Cr.P.C. The High Court, after considering the evidence of P.W.1, Kamlesh Singh, thought it necessary for the appellants to be summoned.”

Hon'ble the Supreme Court in another case *Suman v. State of Rajasthan and another* reported as **2009(4) RCR (Criminal) 908**, held as under:-

“15. In view of the settled legal position as above, we hold that a person who is named in the first information report or complaint with the allegation that he/she has committed any particular crime or offence, but against whom the police does not launch prosecution or files charge-sheet or drops the case, can be proceeded against under Section 319 Cr.P.C. if from the evidence collected/produced in the course of any inquiry into or trial of an offence, the Court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused. As a corollary, we hold that the process issued against the appellant under Section 319 Cr.P.C. cannot be quashed only on the ground that even though she was named in the complaint, the police did not file charge- sheet against her.”

In the light of the above, the Court is required to consider whether the Additional Sessions Judge was justified in dismissing the application under Section 319 Cr.P.C. or not.

The Court below dismissed the application basically on the

following grounds by holding that: (i) no specific role has been attributed to any of the accused nor any motive has been pleaded and (ii) that the evidence of the witness does not inspire confidence as he had stated that he had noticed all the three culprits in the light of the torch and also because the complainant has tried to involve the maximum members of the accused party.

Whereas, from the FIR and statement of eye witness, it emerges that:-

a) the complainant-eye witnesses Umed Singh has specifically stated that when upon hearing the cries of his uncle Daya Chand, he reached the place of occurrence, he saw that accused Sunder son Bhala, Balraj son of Chander, Sushil son of Rama and Karambir alias Makra son of Lala along with other co-accused Rama son of Chander-respondent No. 2, Raja son of Chander-respondent No. 3 and wife of Sunder-respondent No. 4, wife of Balraj respondent No. 5, all resident of Village Singhwa Khass were catching and pressing his uncle Daya Chand and when these all accused persons saw the complainant eye witness, then they also gave lalkara to kill the complainant and even tried to catch the complainant Umed Singh upon which complainant Umed Singh ran towards the side of Village for seeking help and later on the dead body of his uncle Daya Chand were found in the Sugar Cane fields of Chander son of Hari Lal in burnt condition.”

b) Thereafter, statement of PW1 Umed Singh was recorded. He has specifically named all the accused including Rama, Raja sons of Chander. In fact, the said eye witness further went to state the motive behind the murder. It was stated that all the accused had caused the death of his uncle Daya Chand because earlier a dispute taken place over watering of

the fields between Jagdish son of deceased Daya Chand and accused Surender alias Sunder who are neighbourer of fields before 6 or 7 months of the present occurrence and a case was also registered in PP Bas in that regard on 22.12.2007. This part of the statement has not been noticed and in fact wrongly recorded that no motive was stated in the statement of Umed Singh, the eye witness.

c) The Public Prosecutor has specifically stated in his application in para 4, which runs as under:-

4. That there is no other evidence to the contrary in the police report filed under Section 173 Cr.P.C. by the police which rules out the involvement of the above named persons as an accused in this case. The police without collecting any such evidence to the contrary and assigning any reason has deliberately nor challenged the above named persons as accused in this case.”

At the same time, the case of respondent Nos. 4 and 5 is on a different footings. The reasoning given by the Court below while dismissing the application qua these two is justified. The method vide which the murder of Daya Chand is narrated by the eye witness in itself makes very difficult to believe that two women were involved in the said incident. The said incident took place in the fields. All the male members are present. They cordoned off the deceased and thereafter appeared to have taken him to the fields and burnt him alive. It is difficult to expect that two women also participated in the said crime when all other male members were present. In fact, while dismissing the application, the Additional Sessions Judge has accepted the presence of all the six males members and doubted the presence of the two women by recording as under:-

“When there were six young male persons there was no occasion for the females to take part in the commission of the crime thereby cordoning an old aged persons of the age of 70/75 years.”

Thus, it is evident from the FIR and the statement of the eye witness that Rama, Raja participated in the crime. A specific role has been attributed to them. The said FIR stands corroborated by the Statement of the eye witness - Umed Singh. Even in the application under Section 319 Cr.P.C., it is stated that there is no evidence to the contrary to show that how respondents No. 2 and 3, i.e. Rama and Raja have been found innocent when allegation against all the accused is similar.

However, the evidence qua the involvement of two women does not appears to inspire confidence as the incident had occurred in the open fields at early hours 5.30 a.m. on 13.01.2008 in winter when six other males were there.

For the reasons indicated above, the present revision petition is partly accepted qua Rama and Raja - respondents No. 2 and 3. They are ordered to be summoned as additional accused in pursuance to the application under Section 319 Cr.P.C. filed by the prosecution, to face trial before the trial court. The impugned order dated 10.07.2009 passed by the learned Additional Sessions Judge, Hisar dismissing the application under Section 319 Cr.P.C. of the prosecution qua respondents No. 4 and 5 as additional accused to face trial, is affirmed.

Disposed in the aforesaid terms.

(Nirmaljit Kaur)
Judge

30.04.2010

mohan