

[2021 PLRonline 5202](#)

Punjab and Haryana High Court

Meenakshi Mehta J.

PUNEET v. STATE OF HARYANA

CRR No.2856 of 2018

01.12.2021

Criminal Procedure Code, 1973, S. 319 - Application by prosecution to summon additional accused - Partly allowed - In final report persons summoned found innocent - Cannot be construed as conclusive - Final report of the Investigating Agency, by way of Challan/ Charge-sheet, regarding the innocence of any person(s) in a case, cannot be taken to be the gospel truth and the Court is well within its power, as envisaged under Section 319 Cr.P.C, to separate the chaff from the grains to find out the truth regarding the culpability of any person who has not been arrayed as the accused or has not been sent up to face the trial in a criminal case - Perusal of the Final Report/Challan/ Charge-sheet under Section 173 Cr.P.C, reveals that besides accused C (who is already facing the trial in the case), the petitioners had also been nominated as the accused in the said FIR - Though, they were found to be innocent - This finding is not at all to be construed to be conclusive qua their innocence - Right to fair investigation and trial is not meant to be confined to the accused person only and rather, it equally extends to the victim also and the Courts, being the most effective limb of the system of the administration of criminal justice, are supposed to be all the more conscious as well as cautious not only to the extent that an innocent person is not punished but also to ensure simultaneously that no real/actual offender or perpetrator of the crime is let to go scot-free. [Para 9]

Held, Now, as regards the degree of satisfaction of the Court required for invoking the power under the above-said provisions, it is well settled that the same need not be of the level to come to the conclusion that if the evidence goes un rebutted, the same would lead to the conviction of the person proposed to be summoned as the additional accused and rather, the same has to be just somewhat higher than the one required to be considered at the time of the framing of the charge. In the present case, as discussed earlier, the names of the petitioners as well as of said Chander, find mention in the FIR as the accused persons, responsible for the alleged crime. While deposing as PW-3 before the trial Court, the complainant- respondent No.2 has made depositions (Annexure P-2) reasserting his initial version therein regarding the participation of the petitioners, besides their afore-named co-accused, in the alleged commission of the offences. [Para 10]

Criminal Procedure Code, 1973, S. 319 and 482—Indian Penal Code, 1860S. 153-A, 504, 505, 506—Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act—S. 3(1)(R)(Z)(Za), 3(2)(V)(A).

Anmol Rattan Sidhu, Senior Advocate with Deepak Girotra and Shiv Kumar, Advocates for the petitioners in CRR No.2856 of 2018. Arjun Sheoran, Advocate, for the petitioner in CRR No.569 of 2019 and for respondent No.2 in CRR No.2856 of 2018 (appeared in the Court). Vishal Kashyap, D.A.G., Haryana, for respondent No.1-State in both the petitions.

MEENAKSHI I. MEHTA, J.

CRR No.2856 of 2018

(1) Both the instant petitions are being taken-up together for discussion and adjudication as these have arisen out of the same order as passed by learned Additional Sessions Judge, Hisar, on 03.08.2018 whereby the application, moved by the prosecuting agency under Section 319 Cr.P.C., has partly been allowed to the extent of summoning Ram Chander, Sadhu, Jai Kishan, Leela, Sumeru Pandit and Punit (petitioners in CRR No.2856 of 2018) as the additional accused to face trial along-with their co-accused named Chander, in the criminal case arising out of the FIR bearing No.225 dated 10.07.2017 registered at Police Station Sadar, Hansi, under Sections 153-A, 504, 505 and 506 IPC as well as Sections 3(1)(r)(z)(za) and 3(2)(v)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “the SC/ST Act”) but has partly been dismissed so far as it pertains to the prayer, as made therein, for summoning Narender Kadiyan DSP, Udey Bhan Godara SHO, Ramesh Kumar SI and Amrit Lal ASI as additional accused to face trial in the said case.

(2) Bereft of unnecessary details, the facts, culminating in the filing of both these petitions, are that the subject FIR was registered on the basis of the written complaint, moved by Ajay Kumar (arrayed as respondent No.2 in CRR No.2856 of 2018 and the petitioner in CRR No.569 of 2019) (here-in-after referred to as “the complainant”) and also signed/thumb-marked by several other villagers belonging to Dalit community, alleging therein that on 15.06.2017, a scuffle/fight had taken place between some youngsters, belonging to Brahmin caste and Dalit community, over the turn to get water and a criminal case was registered in respect thereof, under several provisions of IPC as well as the SC/ST Act. The accused party therein had been pressurizing them to compromise the matter while threatening that otherwise, they would be socially boycotted and would be forced to leave the Village and also to face the situation similar to the one that arose in Village Mirchpur. On 02.07.2017, the Watchman of their Village named Daulat Ram effected “munadi” (proclamation) to the effect that none of the members of Dalit community in the Village would enter into the fields belonging to the members of Jat and Brahmin communities. On being enquired, he disclosed that accused Chander as well as the petitioners in CRR No.2856 of 2018 had asked him to do so. The said proclamation/munadi was video-graphed. Thereafter, 200-250 persons from the above-said communities gathered in the Village at about 9:00-10:00 P.M. and the members of Dalit community got terrified. The dairy owners in the Village stopped providing milk to them and their children could not be

sent to the school due to the above-narrated atmosphere/circumstances.

(3) On completion of the investigation, the police submitted the Charge-sheet/Challan (annexed as P-1 in CRR No.2856 of 2018) whereby only one accused named Chander had been sent up to face the trial while reporting therein that the remaining accused, i.e the petitioners in CRR No.2856 of 2018, were found to be innocent. During the course of the trial against accused Chander, complainant-informant Ajay Kumar appeared in the witness box as PW-3 and in his examination-in-chief (annexed as P-2 in CRR No.2856 of 2018) as recorded by the trial Court, he reiterated his allegations against the petitioners in CRR No.2856 of 2018 besides making depositions against accused Chander. In view of his testimony, the afore- mentioned application had been moved under Section 319 Cr.P.C wherein the impugned order has been passed.

(4) I have heard learned Senior counsel for the petitioners in CRR No.2856 of 2018, learned State counsel for respondent No.1 in both the petitions and learned counsel for respondent No.2-complainant in CRR No.2856 of 2018 (as counsel for the revisionist-petitioner in CRR No.569 of 2019 also) and have perused the files thoroughly.

(5) However, it is worth-while to mention here that in CRR No.569 of 2019, the complainant-petitioner Ajay Kumar has moved an application bearing CRM No.7987 of 2019 for seeking condonation of the delay of 123 days in filing the said main revision petition and therefore, the adjudication of the same would be the sole key factor to ascertain as to whether the said main petition could be taken up for its hearing on merits or not. It being so, this Court deems it expedient and appropriate to discuss the issues involved in both these petitions separately.

(6) Learned Senior counsel for the petitioners has contended that the investigation in respect of the subject FIR had been conducted in a fair manner and the petitioners were rightly found to be innocent and the impugned order passed qua their summoning as the additional accused to face trial in the case, is not legally sustainable because the allegations levelled by the complainant in the FIR as well as while appearing as PW3 are based on the disclosure of the names of the petitioners and said Chander by the Watchman, as the persons involved in the alleged crime and the same amount to "hear-say evidence" and do not suffice at all to summon the petitioners vide the impugned order.

(7) Learned Senior counsel for the petitioners has contended that the investigation in respect of the subject FIR had been conducted in a fair manner and the petitioners were rightly found to be innocent and the impugned order passed qua their summoning as the additional accused to face trial in the case, is not legally sustainable because the allegations levelled by the complainant in the FIR as well as while appearing as PW3 are based on the disclosure of the names of the petitioners and said Chander by the Watchman, as the persons involved in the alleged crime and the same amount to "hear-say evidence" and do not suffice at all to summon the petitioners vide the impugned order.

(8) Per-contra, learned counsel for respondent No.2 has argued that due to the investigation in respect of the said FIR having been conducted in a shoddy and biased

manner, Writ Petition(s) (Criminal) No(s).293/2019 has already been preferred in the Apex Court and Annexure P-4 is the copy of the order as passed therein on 18.02.2020 wherein it has been mentioned that in view of the oral direction given to the parties on 13.11.2019 to suggest the names for the Special Investigative Team for conducting the investigation into the offences alleged in the petition, the names of four police officers were suggested by learned counsel for the petitioners and the time was granted to the respondent-State to agree on any two of the said names and he has further argued that the said order itself shows that the investigation has not been conducted in an impartial manner and the petitioners were wrongly reported to have been found to be innocent despite the fact that their names did find mention in the FIR and moreover, said PW3 has made specific depositions against them in the Court and it being so, the present petition deserves dismissal.

(9) I find force in the arguments of learned counsel for respondent No.2-complainant because a bare perusal of the Final Report/Challan/ Charge-sheet submitted by the Police/Investigating Agency under Section 173 Cr.P.C, i.e Annexure P-1, reveals that besides accused Chander (who is already facing the trial in the case), the petitioners had also been nominated as the accused in the said FIR. Though, it has been reported therein that they (petitioners) were found to be innocent but this finding is not at all to be construed to be conclusive qua their innocence. Had it been the intent of the Legislature to mean it this way, they would not have thought of incorporating Section 319 in the Code of Criminal Procedure. Moreover, the right to fair investigation and trial is not meant to be confined to the accused person only and rather, it equally extends to the victim also and the Courts, being the most effective limb of the system of the administration of criminal justice, are supposed to be all the more conscious as well as cautious not only to the extent that an innocent person is not punished but also to ensure simultaneously that no real/actual offender or perpetrator of the crime is let to go scot-free. Thus, it is explicit that the final report of the Investigating Agency, by way of Challan/ Charge-sheet, regarding the innocence of any person(s) in a case, cannot be taken to be the gospel truth and the Court is well within its power, as envisaged under Section 319 Cr.P.C, to separate the chaff from the grains to find out the truth regarding the culpability of any person who has not been arrayed as the accused or has not been sent up to face the trial in a criminal case.

(10) Now, as regards the degree of satisfaction of the Court required for invoking the power under the above-said provisions, it is well settled that the same need not be of the level to come to the conclusion that if the evidence goes un rebutted, the same would lead to the conviction of the person proposed to be summoned as the additional accused and rather, the same has to be just somewhat higher than the one required to be considered at the time of the framing of the charge. In the present case, as discussed earlier, the names of the petitioners as well as of said Chander, find mention in the FIR as the accused persons, responsible for the alleged crime. While deposing as PW-3 before the trial Court, the complainant- respondent No.2 has made depositions (Annexure P-2) reasserting his initial version therein regarding the participation of the petitioners, besides their afore-named co-accused, in the alleged commission of the offences.

(11) Further, the mere factum of the afore-named Watchman having informed/disclosed to

the complainant and other persons regarding the involvement of the petitioners and their co-accused in the alleged crime and resultantly, construing the allegations levelled in the FIR and reiterated by the complainant in his depositions as PW3, as “hear-say evidence” does not suffice at all, at this stage, to give a clean chit to the petitioners in the instant case, specially in the circumstances when their co-accused Chander, with the same allegations having been levelled against him, is already facing the trial and the manner of the investigation conducted by the police in the case is already a subject matter of consideration and adjudication before Hon”ble the Supreme Court as is reflected in the above-discussed contents of order Annexure P-4 and the afore-named Watchman has not even been cited as a witness in the list of the prosecution witnesses in the Challan/Charge-sheet, as detailed in the vernacular version of Annexure P-1.

(12) To add to it, the present case squarely falls within the four corners of the verdict recently rendered by the Apex Court in Manjeet Singh versus The State of Haryana wherein the judgment and the order passed by the High Court and the trial Court respectively, qua the dismissal of the application under Section 319 Cr.P.C. have been set aside. In the afore-cited case also, the names of the accused, as sought by the prosecution to be summoned under Section 319 Cr.P.C to face trial in the case, did find mention in the FIR as well as in the testimony of the complainant as recorded during the trial proceedings.

(13) As a sequel to the fore-going discussion, this Court is of the considered opinion that the impugned order passed by learned trial Court to the extent of summoning the petitioners as the additional accused to face trial, does not suffer from any illegality, irregularity, infirmity or perversity and therefore, the same does not warrant any interference by this Court. Resultantly, the petition in hand stands dismissed accordingly.

CRR No.569 of 2019 (O&M)

CRM No.7987 of 2019

(14) This application has been moved by the applicant-petitioner (complainant) under Section 5 of the Limitation Act for seeking condonation of the delay of 123 days in filing the main revision petition CRR No.569 of 2019 so as to assail the impugned order so far as the same pertains to the rejection of the prayer, as made by the prosecution therein, for summoning respondents No.2 to 5 as additional accused to face trial in the said case.

(15) A perusal of this application reveals that the only explanation for the said delay, as put-forth by the applicant-petitioner therein, is that the same is inadvertent and unintentional and throughout during his averments, he has not come forward with any fair, candid and cogent explanation for the said delay whereas it is well settled that the delay of each and every day needs to be plausibly explained.

(16) In view of the above-discussed facts and circumstances, it becomes explicit that the instant application deserves dismissal. Accordingly, the same stands dismissed.

CRR No.569 of 2019

(17) In view of the above-said order, as passed in CRM No.7987 of 2019, the present revision petition also stands dismissed.

(18) However, it is clarified that nothing contained here-in-before shall be construed to be an expression of the opinion of this Court on the merits of the case.