Gurmail Singh and Another Vs State of Punjab

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 30, 2009

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 319

Citation: (2009) 32 CriminalCC 143

Hon'ble Judges: Rajan Gupta, J

Bench: Single Bench

Advocate: Kuldeep V. Singh, for the Appellant;

Final Decision: Dismissed

Judgement

Rajan Gupta, J.
The petitioners, who have been summoned to face trial in exercise of powers u/s 319 Cr.P.C., have challenged the order

on the grounds inter alia that they have been found innocent after thorough investigation, but they have been summoned on the basis of same

statement which was subject matter of investigation and the petitioner/accused cannot be summoned merely on the ground of suspicion.

2. Brief factual background of the case is that one Ramandeep Kaur wife of Karamjit Singh alleged that on 10th July, 2008, Gurmail Singh,

petitioner No. 1 (maternal uncle of husband of the complainant) and Amarjit Kaur (petitioner No.2) wife of Gurmail Singh came to their house at

7/8 P.M. On 11th July, 2008 at about 3.30 A.M. before the complainant woke up, her mother-in-law Manjit Kaur, her husband Karamjit Singh

and the uncle and aunt aforesaid were already awake. They woke up the complainant and forcibly took her in kitchen and pushed her inside. At

that time, there was smell of gas in the kitchen. The mother-in-law lit a match stick and threw it in the kitchen. Due to this reason, clothes of the

complainant caught fire. Nobody helped the complainant. The uncle and aunt (Gurmail Singh and Amarjit Kaur) left on a motorcycle. The

complainant herself extinguished the fire with the help of a blanket. Thereafter, she was admitted to hospital by mother-in-law, husband and

another person. The complainant alleged that the motive to set her on fire was demand of dowry, particularly a car. The complainant suffered

serious bum injuries on her stomach, thighs, back and left arm.

3. The police after investigation, put in challan against mother-in-law Manjit Kaur and husband Karamjit Singh. However, it gave clean chit to the

petitioner Gurmail Singh and his wife Amarjit Kaur despite clear allegation by the complainant that she was set on fire in connivance with these

persons. The complainant Ramandeep Kaur stepped into the witness-box as PW1 and repeated the same version as initially given in the FIR.

4. The complainant stood by her statement that the petitioners had hatched conspiracy with the other accused and had woken up her at 3.30 A.M.

on 11th July, 2008. Thereafter, all of them had pushed her into kitchen where cooking gas had already spread as the gas cylinder was already on.

Then her mother-in-law lit a match stick and threw into the kitchen resulting into severe burn injuries to the complainant. The complainant was

partly cross-examined by the defence counsel but not much dent could be made in her statement. The trial court, therefore, decided to summon the

additional accused (petitioner) in exercise of powers u/s 319 Cr.P.C.

5. Learned counsel for the petitioner has referred to various judgments in support of his contention that petitioners could not be summoned in the

instant case in exercise of powers u/s 319 Cr.P.C. He has referred to judgment reported as Tejwant Kaur @ Tejwinder Kaur & Anr. v. State of

Punjab through SSP, Fatehgarh Sahib, 2004(3) C C C 354 (P&H) : 2004(2) RCR(Criminal) 264, Dharampal v. Hardial Singh, 1999(2) R.C.R.

(Criminal) 165, Hukam Chand & Anr., v. State of Haryana & Anr., 2007(3) RCR(Criminal) 141, Hardeep Singh v. State of Punjab & Ors.

2009(1) Criminal Court Cases 782 (S.C.) : 2008(4) RCR(Criminal) 947 and Mohd.Shafi v. Mohd.Rafiq & Anr., 2007(3) Criminal Court Cases

211 (S.C.): 2007(2) RCR (Criminal) 762.

6. I have heard learned counsel for the petitioner and carefully examined the facts as well as the law as cited before this court.

7. In Tejwant Kaur''s case (supra), this court was pleased to hold that summoning of additional accused cannot be merely on the basis of doubt or

vague allegations. There can be no dispute with the proposition laid down in the said judgment. However, in the present case, the complainant has

levelled clear cut allegations of involvement of the petitioners. Her statement does not appear to be a result of doubt or suspicion. On the other

hand, in Tejwant Kaur''s case (supra), the FIR was lodged by mother of the deceased after 23 days of death of her daughter in which allegations

of harassment were levelled against the in-laws of the deceased, leading to registration of a case u/s 306 IPC. In my considered view, facts of the

said case do not have any bearing on the present case as in this case lodger of the FIR Ramandeep Kaur, the complainant herself, sustained burn

injuries but survived.

8. In Dharampal''s case (supra), relied upon by the learned counsel, it was held that a person cannot be summoned u/s 319 Cr.P.C. unless the

cross-examination of said person has been completed. According to the said judgment, such deposition is legally inadmissible in evidence. In the

instant case, however, the trial court in the impugned order has observed that the complainant was partly cross-examined but nothing worthwhile

came on record which would shatter her testimony. Even otherwise, it is inexplicable as to how the petitioners would be in a position to cross-

examine the complainant unless they appear before the trial court pursuant to their summoning.

9. Another judgment relied upon by counsel for the petitioners in Hukam Chand''s case (supra) is also, in my considered view, not applicable to

the facts of the present case. In the said case, the court observed that the application moved by the complainant shows that he was merely

suspicious of the role of the petitioners. In the said case, daughter of the complainant died in her matrimonial home. The complainant alleged that

his daughter had been strangulated by her husband and two other members of the family. The court came to the conclusion that it was merely a

suspicion of father of deceased. In the instant case, however, FIR has been lodged by the complainant herself, who has clearly elaborated the role

played by the petitioners in the commission of crime. By no stretch of imagination, it can be said that her version is based on suspicion or doubt.

Even after stepping into the witness-box, she maintained the same stand qua the petitioners as narrated to the police at the time of registration of

the FIR.

10. Lastly, the learned counsel has referred to the judgment of the Hon''ble Supreme Court reported as Hardeep Singh''s case (supra). According

to the counsel, the matter as regards guidelines to be followed for summoning an accused u/s 319 Cr.P.C. has already been referred for

consideration to a Bench of three Hon''ble Judges. Even the question whether application u/s 319 Cr.P.C. is maintainable unless cross-examination

of a witness is complete, is part of the referral order. On a pointed inquiry by this court whether any interim directions have been issued by the

apex court in the referral order, the answer of the counsel is in the negative.

11. Though the question whether application u/s 319 Cr.P.C. is maintainable unless cross-examination of the witness is complete, has been

referred to a larger bench by the Hon''ble Apex Court and is yet to be answered, it may be relevant to briefly refer to Mohd.Shafi''s case (supra).

In the said case, the application for summoning u/s 319 Cr.P.C. was moved by a witness. This witness had reached the spot after the incident had

taken place. The Sessions Court was thus not inclined to summon additional accused merely on the basis of examination-in-chief of this witness

and decided to wait for his cross-examination. The High Court, however, allowed the application for summoning, which was set-aside by the

Hon"ble Supreme Court. The Court observed as under: -

12. The trial Judge, as noticed by us, in terms of Section 319 of the Code of Criminal Procedure was required to arrive at his satisfaction. If he

thought that the matter should receive his due consideration only after the cross-examination of the witnesses is over, no exception thereto could be

taken far less at the instance of a witness and when the State was not aggrieved by the same.

13. From the decisions of this Court, as noticed above, it is evident that before a court exercises its discretionary jurisdiction in terms of Section

319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned is in all

likelihood would be convicted. Such satisfaction can be arrived at inter alia completion of the cross-examination of the said witness. For the said

purpose, the court concerned may also like to consider other evidence. We are, therefore, of the view that the High Court has committed an error

in passing the impugned judgment. It is accordingly set aside. The appeal is allowed.

12. From the observation of the apex court it is obvious that in the peculiar facts and circumstances of the case, the apex court came to the

conclusion that it was desirable to wait for the cross-examination of the witness sought to be summoned u/s 319 Cr.P.C., particularly when

summoning had not been sought by the State. The apex court observed that discretionary jurisdiction u/s 319 of the Cr.P.C. is to be judicially

exercised after court comes to the conclusion that there is possibility of conviction of the accused so summoned and that such satisfaction can be

arrived at inter alia on completion of cross-examination of the said witness. Thus it is clear that while deciding to summon additional accused, the

court may rely inter alia on cross-examination of a witness. In the present case, the witness, who is the complainant herself, has already been partly

cross-examined and according to the trial court, her testimony has not been shattered in any way. Moreover, summoning has been sought by the

Additional Public Prosecutor for the State and not by a witness. Thus, the judgment in Mohd.Shafi"s case (supra) cannot help the petitioners in

support of their plea that impugned order summoning additional accused be quashed. This case (Mohd.Shafi) was cited before the Allahabad High

Court Bankey Lal Sharma v. State of U.P. & Anr., 2004(4) RCR(Criminal) 300 while impugning a similar order passed u/s 319 Cr.P.C.

Dismissing the petition, the Court observed as follows:-

4. In my view this contention of the learned counsel is based on a mis-reading of the aforesaid decision. The said decision only mentions that

discretion to summon an accused must be judicially exercised and that the Court should arrive at a satisfaction that a prima facie case is made out

against an accused.

5. Further more, Mohd.Shafi, (2007)4 ALJ 317 (supra) was a case where the learned Sessions Judge was not satisfied after the examination-in-

chief of the witness PW1 because the witness in that case stated that he has subsequently arrived at the spot. It was in that situation that, the Court

had insisted that there should be more material against the accused.

13. In recent judgment reported as Bholu Ram v. State of Punjab, 2008(4) Criminal Court Cases 621 (S.C.) : 2008(4) RCR(Criminal) 187 the

apex Court has observed as under:-

21. Sometimes a Magistrate while hearing a case against one or more accused finds from the evidence that some person other than the accused

before him is also involved in that very offence. It is only proper that a Magistrate should have power to summon by joining such person as an

accused in the case. The primary object underlying Section 319 is that the whole case against all the accused should be tried and disposed of not

only expeditiously but also simultaneously. Justice and convenience both require that cognizance against the newly added accused should be taken

in the same case and in the same manner as against the original accused. The power must be regarded and conceded as incidental and ancillary to

the main power to take cognizance as part of normal process in the administration of criminal justice.

22. It is also settled law that power u/s 319 can be exercised either on an application made to the court or by the court suo motu. It is in the

discretion of the court to take an action under the said section and the court is expected to exercise the discretion judicially and judiciously having

regard to the facts and circumstances of each case.

14. In the facts and circumstances of the case, particularly the statement of the complainant and the fact that in the part crossexamination

conducted on behalf of the accused, already charged in the case, not much dent has been made in her testimony, I do not find it a fit case for

exercise of power in revisional jurisdiction for setting aside the impugned order. Learned counsel has not been able to point out any legal infirmity

with the said order.

No other point has been addressed.

This revision petition is hereby dismissed.