

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1633-2022 (O&M)

Decided on 18.02.2025

Lakha Ram

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Kunal Dawar, Advocate for the petitioner

Mr. Chetan Sharma, DAG Haryana

Mr. SS Sarwara, Advocate for

Mr. Manoj Tanwar for respondents No.2 to 6

Sandeep Moudgil, J.

(1). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the impugned order dated 08.07.2022 passed by Addl. Sessions Judge, Palwal whereby the application of the petitioner/complainant under Section 319 CrPC has been rejected seeking summoning of respondents No.2 to 6 as additional accused in case FIR No.126 dated 28.12.2019 under Sections 148/149/341/427/302/120-B IPC and Section 27/54/59 of Arms Act, 1959 registered at Police Station City Mundkati, District Palwal.

(2). Facts as emerging in the FIR is reproduced as under:-

“Application for taking legal action against Arun @ Anil s/o Khushi Ram, Vinod s/o Om Prakash, Yashveer s/o Harjeet, Dhanoj s/o Lakshaman and two others, all residents of Banchari. Sir, myself Lakharam s/o Govind Ram is r/o village Banchari. On dated 27.12.19, in evening around 8, I along with my elder son Mohit was going in car from village Banchari to my house in Hodal. When we reached at the phirni of village Bancheri near Harijan temple, then accused person on two motorcycle came and Parked the motorcycle in front of our car. We stop our car, then Vinod son of Om

Prakash fixed the gun on my head (kanpati per Banduk Thandi), Yasveer son of Harjeet caught hold me, Dhanoj son of Lakshman caught hold my son Mohit. Arun @ Ani who was having country-made pistol (Katta) in his hand hit the bullet on the neck below the ears. Other two accused hit Danda on our car. They can be identified, if brought in front of me. when I shouted, then accused person ran from the spot. Son of my chacha namely Hari Ram son of Daya Lal also came on the spot. Accused person left their motorcycle number HR-29-AG-7013 Splender on the spot and ran away. Around 7/8 months back, all accused persons had fight with my son Mohit on the occasion of Holi and all the accused persons were giving threat for seeing my son. Since then all the accused persons were keeping grudge with my son. When I along with the help of Hari Ram (son of my chacha) were taking my son Mohit to Palwal, Hospital, then he gave up his life (dum tod diya). Strict legal action be taken against the accused persons..”

(3). Learned counsel for the petitioner submits that after the framing of charges, the petitioner-complainant Lakha Ram was examined as PW1 and thereafter he moved an application under Section 319 CrPC for summoning Naresh, Vinod, Yashvir, Dhanoj, Surjeet who were exonerated during investigation and offences under Section 148/149 IPC were deleted and that of Section 34 IPC was added.

(4). It is contended that the complainant attributed specific roles to them, including restraining him and his son inasmuch as accused Naresh allegedly provided the location of the deceased and supplied the murder weapon, a country-made pistol, to accused Arun and the phone call records reveal Naresh's constant communication with Arun, including three calls on the day of the incident and multiple calls on the preceding two days whereas accused Surjeet is alleged to be the primary conspirator, orchestrating the murder. He further submits that the petitioner-complainant, as PW1, corroborated his complaint and supplementary statement, being an eyewitness to the incident and being so, despite their involvement in the heinous murder,

the Investigating Agency have unjustly exonerated these five accused to be summoned.

(5). Learned State counsel and counsel for the complainant vehemently contend that the complainant initially implicated accused Vinod, Yashvir, and Dhanoj, alleging that they actively participated in the murder and even attributed specific roles to them, including restraining him and his son and specifically pointed out that accused Naresh allegedly provided the location of the deceased and supplied the murder weapon, a country-made pistol.

(6). It is urged on behalf of counsel for the complainant that the call records clearly reveal frequent communication between Naresh and accused Arun, including three calls on the day of the incident and multiple calls on the preceding two days and the call details are a part of the record before the trial proceedings. Accused Surjeet is alleged to be the primary conspirator, orchestrating the murder. The complainant, an eyewitness to the incident, corroborated his complaint and supplementary statement while testifying as PW1. The Investigating Agency's decision to exonerate these five accused, despite their alleged involvement in the heinous murder, is contested and therefore, the trial court has rightly passed the impugned order.

(7). Heard learned counsel for the parties.

(8). The complainant, an eyewitness to his son Mohit's death, provided his initial account, which led to the registration of the FIR against Vinod, Yashbir, and Dhanoj as the individuals who restrained him and his son but did not mention the name of Naresh and Surjeet in his initial statement and in his supplementary statement dated 29.12.2020, the complainant implicated Surjeet as the primary conspirator and Naresh as the person who provided the murder

weapon. Despite this, the DSP concerned vide report dated 21.09.2020 exonerated the five accused individuals, including Naresh and Surjeet stating that these five accused were not present at the scene of the incident. The DSP's investigation relied on witness statements and call detail records, which suggested that the murder was committed by Arun, Parmanand, Deepak, and juvenile Pawan. The disclosure statements, recovery of the murder weapon and mobile phones corroborated these findings. However, the trial court did not find any sufficient material on record to summon the accused persons as additional accused on the ground that the court cannot summon the accused on the basis of the statement of the complainant alone which has already been considered by the police.

(9). The trial court rightly emphasized that accused individuals can only be summoned if there is substantial evidence on record demonstrating their involvement in the offense. This evidence must exceed a prima facie case, which is typically considered during the framing of charges, but falls short of conclusive proof that would lead to a conviction if left unrebutted.

(10). In the absence of such evidence, the court should refrain from exercising its power under Section 319 CrPC, for, the accused person can be summoned provided there is concrete evidence indicating his/their complicity. In this case, besides the complainant's statement, there is no material evidence on record suggesting the involvement of the proposed accused in the commission of the offense. Conversely, the investigation proceedings are coherent, consistent, and reliable, with the investigation officers providing detailed reasoning for charging the accused facing trial and exonerating other individuals named in the FIR and supplementary statement.

(11). In view of the above discussion, there is no legal infirmity or irregularity in the order dated 08.07.2022 passed by the trial court. Therefore, this petition being devoid of merits stands dismissed.

(12). Ordered accordingly.

18.02.2025

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No