

State Vs Sukhdev Singh

Present: Sh. Sandeep Kumar, APP for the State.
Accused on bail with counsel Sh. Roop Kumar Sharma, Advocate.

ORDER:-

This order of mine shall dispose of an application under Section 319 Cr. P.C for summoning Mohinder Singh son of Sarwan Singh resident of village Indergarh, District Moga as additional accused, having been moved by learned APP for the State on the grounds that complainant Rupa was examined as PW5 who had categorically deposed against the abovesaid person and PW2 Amardeep Singh had also deposed that the offending vehicle bearing registration No. PB-29-J-9181 was transferred in the name of abovesaid person and thus, there is sufficient evidence on the case file to try and convict the abovesaid person. At the end, a prayer for allowing the present application has been made.

2. Upon notice of the above said application, respondent/accused filed reply to the present application while submitting that complainant Rupa had deposed in her statement dated 18.11.2011 recorded by the police under Section 161 Cr. P.C to the effect that on dated 12.11.2011, present case was got registered on her statement and that day, due to the death of her husband, she was not in sound mind condition and when on the date of occurrence, she visited Civil Hospital, Moga, it came to her notice that her husband is admitted at Civil Hospital, Moga and due to her unconsciousness, she got recorded the name of accused as Mohinder Singh, whereas she has come to know that the name of accused is Sukhdev Singh. It is further submitted by respondent/accused that in the present case, the complainant has entirely changed her statement dated 18.11.2011 and has wrongly deposed that said Mohinder Singh is guilty for alleged accident, whereas on plain perusal of the statements suffered by complainant, it reveals that the complainant was not present at the time of accident alleged to be committed by accused Sukhdev Singh and infact, the statements of complainant are based on hearsay facts and she has no direct knowledge about the

Shilpa, PCS, Judicial Magistrate 1st Class, Moga, 12.07.2016

original culprit, who committed the alleged accident. It is further submitted by respondent/accused that neither accused Sukhdev Singh nor Mohinder Singh are guilty of alleged accident and present case is 'Hit & Run' case and alleged accident has not been committed by either Sukhdev Singh or by Mohinder Singh and it is well settled law that nobody can be held guilty on the basis of hearsay facts nor any evidence is on record against said Mohinder Singh or Sukhdev Singh which stood guilty for them for the alleged accident. It is further submitted by respondent/accused that the complainant had already received approximate Rs. 56 Lacs as damages of death of deceased Pankaj Kumar Singh through MACT wherein the complainant has deposed about the accident and she had not stood guilty to Mohinder Singh and now she has changed entire version of her statement and has levelled false allegations against said Mohinder Singh whereas earlier she had levelled false allegations against accused Sukhdev Singh i.e. sufficient to take adverse inference that the present case is full of suspicion and the prosecution is unable to prove it beyond the shadow of doubt. It is further submitted by respondent/accused that said Mohinder Singh is a handicapped person, whose left arm is amputated and is having 70% permanent disability, which is duly mentioned in medical certificate and thus, without left hand, Mohinder Singh cannot drive any vehicle. At the end, a prayer for dismissal of the present application has been made.

3. I have heard the learned APP for the State and learned defence counsel and have gone through the case file carefully. The applicant has filed the present application to summon Mohinder Singh son of Sarwan Singh resident of village Indergarh, District Moga as additional accused on the ground that the complainant has categorically deposed against the abovesaid person and PW2 Amardeep Singh has also deposed that the offending vehicle was transferred in the name of the abovesaid person. Perusal of the case file shows that in the first statement recorded before the police suffered by the complainant dated 12.11.2011, she has specifically stated the

name of Mohinder Singh son of Sarwan Singh was the driver of the offending vehicle. Further perusal of the statement of Ashok Kumar son of Sita Ram recorded under Section 161 Cr. P.C dated 12.11.2011 also shows that he has specifically mentioned the name of Mohinder Singh son of Sarwan Singh as the driver of the offending vehicle and in the same manner, statement of Ashish Kumar son of Suresh Chander recorded under Section 161 Cr. P.C who is one of the eye witness of the present case has also specifically mentioned the name of Mohinder Singh son of Sarwan Singh as the driver of the offending vehicle. Even in the challan presented before the Court, the same name has been mentioned as driver of the offending vehicle. Thus, in view of my detailed discussion made above, I am of the considered view that before proceeding further to discuss the rival submission of parties it would be appropriate to discuss the provisions of section 319 Cr.P.C.

Section 319 Cr.P.C. states that (i) where, in the course of any 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 which he appears to have committed.

- (ii) Where such person is not attending the court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.
- (iii) Any person attending the court although not under arrest or upon a summons, may be detained by such court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.
- (iv) Where the court proceeds against any person under sub-section (1) then:-
 - (a) The proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;
 - (b) Subject to the provisions of clause (a), the case may proceed as if such person had been an accused when the court took

cognizance of the offence upon which the inquiry or trial was commenced.

The learned counsel for the accused has argued on the ground that the cross examination of the complainant has not been completed. The court does not have power to exercise its power u/s 319 (1) Cr. P.C. unless and until the entire cross-examination of complainant is completed, no application u/s 319 Cr. P.C. can lie. In this regard learned APP for the State has relied upon citation tilted as “**Gurdev Singh Vs. State of Haryana 2009(4)RCR.Crl. 515** wherein the Hon'ble Punjab & Haryana High Court has held that the summoning of a person as additional accused-Trial of criminal case-Complainant examined, but not cross examined- Complainant also naming two persons as accused who were challenged, but their names were mentioned in report under section 173 Criminal Procedure Code-Magistrate can summon the said persons as accused without cross-examination of witness-Held-

1. It cannot be contended that the word 'evidence' as used in Section 319 Criminal Procedure Code would mean evidence, which is tested by cross-examination.
2. It is primarily the satisfaction of the Court and a prima facie conclusion that a person, who is to be summoned as an additional accused, is involved in the commission of the crime for which he can be tried along with those who stood already named by the police as accused.2008(1)RCR(Crl.)592 (P&H) and 2000(2) RCR (Crl.) 75 (SC) relied.

The learned APP for the State has also relied upon citation tilted as **Kartar Singh Vs. State of Punjab, 208(1) Law Herald (Punjab and Haryana) 237** and on the basis of the said judgment, the counsel for the complainant has submitted that the judgments, which has been relied upon by the counsel for the petitioners, have been considered therein and the court has come to a conclusion that there is no legal requirement to wait conclusion of cross-examination of the witness before considering the aspect of summoning a person as an additional accused. What is required is

satisfaction of the court with regard to reasonable prospect to his conviction for an offence which he appears to have committed.

Thus from the entire discussion made above and in the light of case law cited by the learned APP for the State and in view of above said discussion, the application u/s 319 Cr. P.C. is allowed and accused namely Mohinder Singh son of Sarwan Singh be summoned as additional accused in the present case for 01.08.2016.

Pronounced in open Court:

Dated: 12.07.2016

(Shilpa),
Judicial Magistrate 1st Class,
Moga.

State Vs Sukhdev Singh

Present: Sh. Sandeep Kumar, APP for the State.
Accused on bail with counsel Sh. Roop Kumar Sharma, Advocate.

Arguments heard. Vide my separate detailed order of the even date, an application under Section 319 Cr. P.C for summoning Mohinder Singh son of Sarwan Singh as additional accused is allowed. Notice to additional accused namely Mohinder Singh be issued for 01.08.2016.

Dated: 12.07.2016

(Shilpa)
JMIC/Moga