



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

107

CRR-1328-2024(O&M)
Date of order: 19.07.2024

Dimple @ Dimple Kumar

.....Petitioner(s)

Vs.

State of Haryana & Others

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Munish Mittal, Advocate for the petitioner.
Mr. Surinder Kumar Dagar, DAG Haryana.
Mr. Manoj Kumar Taya, Advocate for
respondents No.3 to 5.

Nidhi Gupta, J.

Challenge in the present Revision Petition is to the order dated 02.07.2024 passed by learned Additional Sessions Judge, Karnal, whereby the application filed by the petitioner/complainant under Section 319 Cr.P.C. for summoning of private respondents No.2 to 7 herein, as additional accused to face trial in case FIR No.376 dated 12.06.2018 (Annexure P1) registered under Sections 148, 149, 323, 307, 447 and 506 IPC and Sections 25 & 54 of the Arms Act at Police Station Gharaunda, Karnal, has been dismissed.

2. Mr. Manoj Kumar Taya, Advocate puts in appearance on behalf of respondents No.3 to 5 and files Memorandum of Appearance, which is taken on record.

3. Learned counsel for the petitioner inter alia submits that in the FIR (Annexure P-1), the petitioner had specifically named 10 persons including respondents No.2 to 7 herein. The petitioner had also made serious

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and specific allegations against each of the accused. However, challan was presented only against 5 persons. As such, the petitioner moved an application dated 26.04.2024 (Annexure P2) seeking summoning of the remaining accused to face trial. However, the learned trial Court without considering material facts available on record dismissed the said application. It is contended that the petitioner has levelled allegations against respondents No.2 to 7 herein. Even in his testimony dated 24.03.2022 (Annexure P4) before the learned trial Court, the petitioner PW4 has specifically named respondents No.2 to 7. It is stated that accordingly, in the face of such overwhelming evidence, learned trial Court was in error in dismissing the application of the petitioner.

4. Learned counsel appearing on behalf of respondents No.3 to 5 vehemently controverts the above said assertions, and submits that in actual fact, the petitioner side is the aggressor, and are accordingly facing trial in a cross-case filed by respondents No.2 to 7. It is submitted that in the incident at hand dated 11.06.2018, inquiry was conducted into the matter by the Deputy Superintendent of Police, Karnal. As per inquiry report dated 02.08.2018, it has been noted that on an application of one of the present 'accused' namely Randhir, a complaint No.1804 Peshi dated 12.07.2018 was recorded. Upon investigation, vide report dated 02.08.2018, it was found that father of the present petitioner had called the petitioner along with his brother who had come to the fields of respondents No.2 to 7 along with 5-6 other miscreants armed with sticks and other weapons. It is also reported as follows:-

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“...Through the investigation of the complaint, parties Ran Singh etc. were found to be aggressive side and they were also found to have deliberately caused injuries to the complainant. The X-ray report of the complainant has not been received yet. From my investigation, crimes under section 148, 149, 323, 341, 506, 447, 511 of IPC have also been found to be committed by Ran Singh’s party. Therefore, instructions should be given to the SHO, Police Station Gharaunda to register a case under the above-mentioned Sections in the above-mentioned case and after taking the X-ray report of the complainant, take action as per the rules and settle the case”.(Emphasis added)

5. It is submitted that pursuant to the said report, the three accused being the present petitioner, his father Ran Singh and his brother Deepak have been charged by learned Additional Sessions Judge, Karnal under Sections 323, 325, 341, 447, 506 and 511 IPC vide order dated 06.01.2020. In the said order, it has also been noted by learned Additional Sessions Judge, Karnal that “...A cross-case State Vs. Pawan and others (SC/251/2019), under sections 148, 149, 307, 323, 447, 506 IPC is also pending in this court for 22.01.2020...”. Report of Deputy Superintendent of Police, City Karnal dated 02.08.2018 and order dated 06.01.2020 passed by learned Additional Sessions Judge, Karnal, are produced in the Court, which are taken on record as Annexures P3 and P4 respectively.

6. No other argument is made on behalf of the parties.

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7. I have heard learned counsel for the parties and perused the case file in great detail.

8. Learned counsel for the petitioner has been utterly unable to dispute the above said submissions made by learned counsel for respondents No.3 to 5.

9. It is also relevant that while passing the impugned order, the learned trial Court has recorded that “....*It appears that the names of accused sought to be summoned were mentioned in the FIR deliberately by the complainant to make the alleged offence appear more grievous in nature and also rope in all the other family members and known persons of the accused presently facing trial. The finding of the police, thus, cannot be disbelieved straightway.*”. Relying upon the investigation carried out by the Investigating Agency whereupon it was found that the allegation made by the petitioner/complainant that respondent No.4 had taken out country made pistol and fired gunshots on the complainant party, were found to be false. Even no such country-made pistol was recovered during investigation. It was accordingly observed in the impugned order that the prerequisite for summoning under Section 319 Cr.P.C., is that a prima facie case is made out against the proposed accused. However, in the present case, it was not so.

10. At this stage, reference may be made to judgment of the Hon’ble Supreme Court in the case titled as “**Sarabjit Singh Vs. State of Punjab, (2009) 16 SCC 46**: wherein it has been held that:

“21....An order under Section 319 of the Code, therefore, should not be passed only because the first informant or one of the witnesses seeks to

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implicate other person(s). Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction. For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.”

11. The aforementioned view has further been upheld by the Hon’ble Supreme Court in the case of “**Hardeep Singh Vs. State of Punjab and Others, (2014) 3 SCC 92**”, wherein it has been held that power under Section 319 Cr.P.C. is a discretionary and extraordinary power, which has to be exercised sparingly and cautiously only in those cases where the circumstances so warrant. In this regard, the following observations and guidelines issued by the Hon’ble Supreme Court in **Hardeep Singh’s case (supra)** are apposite: -

“110. We accordingly sum up our conclusions as follows :

Question Nos. I & III

Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence

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collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

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**CRR-1328-2024(O&M)***Question No. II*

Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination, or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV

Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The

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difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No. V

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been charge sheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh”.

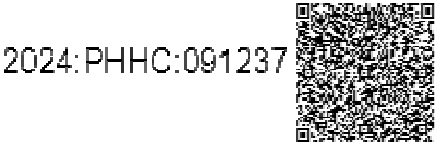
12. The following observations as contained in Paras 105 and 106 of **Hardeep Singh’s case (supra)** are also relevant and are reproduced hereinbelow:-

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“105. Power under Section 319 Cr.P.C., is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge. but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C., the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C., to form any opinion as to the guilt of the accused.”



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13.

Learned counsel for the petitioner is unable to dispute the above said factual and legal position.
14.

The present petition,accordingly, stands **dismissed**.
15.

Pending application(s) if any also stand(s) disposed of.

19.07.2024

Sunena

(Nidhi Gupta)

Judge

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>