

CRR-1530-2010 (O&M)

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In the High Court of Punjab and Haryana at Chandigarh.

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Date of Decision: 09.12.2015

Surjit Kaur and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.S. Bajaj, Advocate,
for the petitioners.

Mr. R.P.S. Sidhu, AAG, Punjab.

None for respondent No.2.

SABINA, J.

Petitioners have filed this petition challenging the order dated 06.05.2010, whereby, application moved by the prosecution under Section 319 of Criminal Procedure Code, 1973 ('Cr.P.C.' for short) for summoning the petitioners to face the trial as additional accused was allowed.

Learned counsel for the petitioners has submitted that complainant had lodged the FIR against Jaswinder Pal, Sukhwinder Kaur and Kala. Petitioner No.1 is the mother of accused-Jaswinder Pal, whereas, petitioners No.2 and 3 are the sisters of accused-Jaswinder Pal. After investigation of the

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case, challan was presented against accused-Jaswinder Pal under Section 420 of Indian Penal Code, 1860 ('IPC' for short). So far as Sukhwinder Kaur and Kala are concerned, they were found innocent during investigation. Complainant had also filed a private complaint (Annexure P-3) against Jaswinder Pal, Sukhwinder Kaur, Kala and Surjit Kaur (petitioner No.1), under Sections 376, 419, 467, 468 and 471 read with Section 120 B IPC. The said complaint was dismissed in default vide order dated 09.05.2012 and the said order has become final. In the State case, charges have been framed against accused Jaswinder Pal under Sections 420 and 376 IPC. However, complainant while appearing in the witness-box levelled allegations against the petitioners that they also used to be present when accused Jaswinder Pal used to give her some intoxicant substance before the commission of rape. Further, petitioners also used to say that they will perform the marriage of the complainant with accused-Jaswinder Pal.

Learned counsel for the petitioners has further submitted that the false allegations have been levelled against the petitioners. In fact, a perusal of the complaint Annexure P-3 reveals that the complainant was married to Surinder Pal and on this account she was living in England. In her cross-examination, complainant had admitted that her husband had visited India with her in the year 1994 and had thereafter

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again visited India with her in the year 2001 but her husband never met accused Jaswinder Pal. Complainant had further stated that the age of her daughter was 27 years. (Copy of the cross examination of the complainant dated 29.08.2011 has been placed on record by the learned counsel for the petitioners during the course of arguments.)

Learned State counsel, on the other hand, has opposed the petition.

None has appeared on behalf of respondent No.2 despite service.

Section 319 Cr.P.C. reads as under:-

“Power to proceed against other persons appearing to be guilty of offence:-

(1) 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.

(2) 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.

(3) Any person attending the Court although not under

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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.

(4) 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 witnesses re-heard.

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

Thus, as per the above provision, the Trial Court may summon any person to face the trial as an accused if there is sufficient material available against the said person during trial to proceed against him.

While dealing with the powers under Section 319 Cr.P.C., the Apex Court in '**Hardeep Singh versus State of Punjab and others, 2014(1) R.C.R. (Criminal) 623**, has held as under:-

“Question Nos. 1 & III

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

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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 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

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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.

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

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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 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 chargesheeted 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.

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The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove.

In the present case, complainant at the time of lodging of the FIR had not named the petitioners as accused and consequently no allegations have been levelled against the petitioners in the FIR. In a private complaint, filed by the complainant, Annexure P-3, she had arrayed only petitioner No.1 as an accused along with the accused mentioned in the FIR. However, the said complaint was dismissed in default vide order dated 09.05.2012. (Copy of the said order has been placed on record by the learned counsel for the petitioners during the course of arguments.) It is only for the first time when the complainant appeared in the witness-box that she has named the petitioners as accused and has levelled allegations against them that they also used to be present when accused Jaswinder Pal used to serve water mixed with something and she used to become unconscious. It is further the case of the complainant that petitioners also used to say that they will perform marriage of the complainant with accused- Jaswinder Pal.

A perusal of Annexure P-3 reveals that in Para 1 of the complaint, it has been stated by the complainant that she

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was a British citizen as she had got married to Surender Pal Singh who was a British citizen. She was permanent resident of England. In her cross-examination, complainant stated that she had met accused-Jaswinder Pal for the first time in the year 2001. She further stated that her husband had also visited India with her in the year 2001 and had returned after two weeks. Her husband had not met accused Jaswinder Pal. Her daughter was aged about 27 years.

Thus, it is evident that the complainant herself was a married lady and the plea taken by her that she had developed physical relations with accused-Jaswinder Pal under the impression that he was unmarried, does not appear to be probable. Since, the complainant was herself a married woman, she could not have legally performed marriage with accused Jaswinder Pal. Petitioners were not initially arrayed by the complainant as accused at the time of lodging of the FIR. Consequently, no allegations were levelled against them. Thus, while appearing in the witness-box, complainant has given a new story which was not part of the FIR. Trial Court fell in error while allowing the application moved by the prosecution under Section 319 Cr.P.C. for summoning the petitioners to face the trial as additional accused. It appears that the complainant has levelled allegations against the petitioners while appearing in the witness-box just to

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involve them in this case being mother and sisters of accused Jaswinder Pal.

Accordingly, this petition is allowed. Impugned order dated 06.05.2010, whereby, petitioners were ordered to be summoned to face the trial as additional accused on an application moved by the prosecution under Section 319 Cr.P.C., is set aside. It is clarified that any observation made above will have no bearing on the merits of the case.

December 09, 2015
kapil

(SABINA)
JUDGE