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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR No.1901 of 2013 (O&M)

Date of decision: December 07, 2015

Yadwinder Singh @ Jaddu

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sanjeev Manrai, Senior Advocate with
Mr. Sumit Jain, Advocate
for the petitioner.

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

Mr. Ranjivan Singh, Advocate
for the complainant.

SABINA, J

Petitioner has filed this petition challenging the order dated 05.02.2013, whereby, he was ordered to be summoned to face the trial as an additional accused on an application moved by the prosecution under Section 319 of Code of Criminal Procedure, 1973 ('Cr. P.C.' for short).

Learned Senior counsel for the petitioner has submitted that the impugned order dated 05.02.2013 was liable to be set aside as the trial Court had ordered the summoning of the petitioner as an additional accused, merely, on the ground that prima-facie sufficient evidence was available against the petitioner. In fact, the degree of satisfaction under Section 319 Cr. P.C. was much higher

than prima-facie case. Learned Senior counsel has further submitted that the petitioner was found innocent during investigation as he was not found present at the spot at the time of alleged occurrence. Petitioner was a student leader and has now been ordered to be summoned after a gap of about eleven years of the occurrence. In support of his arguments, learned Senior counsel has placed reliance on ***Babubhai Bhimabhai Bokhiria and Anothers Versus State of Gujarat and Others***, 2014 (2) R.C.R. (Criminal) 915, wherein, it was held as under:-

“Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher.”

Learned State counsel who is assisted by the learned counsel for the complainant, on the other hand has opposed the petition and has submitted that specific role was attributed to the petitioner at the time of occurrence.

The plea of *alibi* taken by the petitioner could be established

by him while leading his defence evidence. In support of his arguments, learned counsel has placed reliance on *Hardeep Singh versus State of Punjab and others* 2014(1) R.C.R. (Criminal) 623, wherein, it was 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?

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 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.

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 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. The matters be placed before the

appropriate Bench for final disposal in accordance with law explained hereinabove.”

Prosecution story, in brief, is that complainant Azadwinder Singh was present in his shop on 29.06.2002 along with others. In the meantime, petitioner along with his co-accused entered the shop forcibly. Petitioner and his co-accused who were armed with weapons had inflicted injuries on the person of the complainant. During investigation of the case, petitioner was found innocent and his name was kept in column No.2 at the time of presentation of challan.

During the pendency of the trial, prosecution moved an application under Section 319 Cr. P.C. for summoning the petitioner to face the trial as an additional accused. Vide the impugned order, the said application was allowed by the trial Court. Hence, the present petition by the petitioner.

Section 319 of 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 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 Court has ample power to summon any person as additional accused to face the trial with the accused already facing trial, if there is enough material on record to proceed against the said person.

Annexure P-2 is the statement of the complainant recorded during trial. A perusal of the said statement reveals that the complainant has specifically stated that the petitioner had given three iron rod blows on his person which had hit him on his head, chest and back. A perusal of the medico-legal report of the injured reveals that the injured had suffered 18 injuries on various parts of his body. Although, the petitioner was declared innocent during investigation but the said aspect can be considered by the trial Court while deciding the trial.

In the present case, there was sufficient material on record to summon the petitioner to face the trial as an

additional accused. There is no quarrel with the preposition of law settled vide judgment relied upon by the learned Senior counsel for the petitioner but the same fails to advance the case of the petitioner in the present case, as there is sufficient material available on record to proceed against the petitioner to summon him to face trial as an additional accused.

Hence, no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

December 07, 2015
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