

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.3800 of 2013

Date of Decision: May 06, 2015

Mukesh ChandPetitioner

Versus

State of Haryana and othersRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.NS Shekhawat, Advocate for the petitioner.

Mr.MS Sidhu, Additional Advocate General, Haryana.

Mr.Satish Chaudhary, Advocate for respondents
No.2 to 10.

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TEJINDER SINGH DHINDSA, J.

This order shall dispose of Criminal Revision No.3800 of 2013 (Mukesh Chand v. State of Haryana and others) and Criminal Revision No.654 of 2014 (Subrati v. State of Haryana and others) since identical issue is involved in these two revision petitions.

2. Challenge in Criminal Revision No.3800 of 2013 is to the order dated 15.10.2013 passed by the learned Additional Sessions Judge, Nuh, whereby an application filed under Section 319 of the Code of Criminal Procedure moved by the prosecution/complainant for summoning respondents No.2 to 10 has been dismissed.

3. Briefly noticed, FIR No.130 dated 10.7.2009 was registered at Police Station Nagina under Sections 148, 149, 323, 325, 324, 326, 506 and 307 of the Indian Penal Code on the complaint of the present petitioner with regard to a murderous assault having allegedly been committed by respondents No.2 to 10 and their accomplices. Serious injuries were stated to have been caused to 12 persons. Injuries suffered by Ram Dayal were stated to have been declared dangerous to life. Even injuries suffered by Deep Chand, Bhim Singh and Rohtash were opined grievous in nature. In the application filed under Section 319 of the Code of Criminal Procedure seeking the summoning of respondents No.2 to 10 as additional accused, it was stated that their names figured in the FIR which had been registered without any undue delay and even specific roles had been assigned to them. However, it was contended that the police had colluded with the accused side and the names of respondents No.2 to 10 were kept in column No.2 in the final report submitted under Section 173 of the Code of Criminal Procedure.

4. Learned counsel appearing in Criminal Revision No.3800 of 2013 has contended that even during the course of trial, the statements of PW1 Manoj Kumar, PW2 Dharam Pal, PW3 Mukesh Chand and PW4 Ram Dayal were recorded and even as per such statements, specific roles/injuries were attributed to respondents No.2 to 10.

5. Criminal Revision No.654 of 2014 is directed against an order dated 15.10.2013 passed by the learned Additional Sessions Judge, Nuh wherein also an application filed under

Section 319 of the Code of Criminal Procedure in the cross version seeking summoning of respondents No.2 to 14 as additional accused had been dismissed.

6. Learned counsel appearing for the petitioner in Criminal Revision No.654 of 2014 would submit that a cross case was registered on the statement of Subrati and as per statements of PW5 and PW6, namely, Rukmudeen and Subrati respectively, specific roles and injuries had been attributed to respondents No.2 to 14 and which had found corroboration from the statements of PW1 Dr.RK Paliwal, PW2 Dr.RK Dahiya and PW3 Dr.Vikram Aggarwal and inspite thereof, the Court has declined the prayer for summoning respondents No.2 to 14 as additional accused in the light of impugned order dated 15.10.2013.

7. Perusal of the impugned orders dated 15.10.2013 passed in Criminal Revision No.3800 of 2013 and in Criminal Revision No.654 of 2014 would reveal that the reasons and basis assigned by the learned Additional Sessions Judge, Nuh while declining the applications filed under Section 319 of the Code of Criminal Procedure in the main case as also in the cross case are identical. Primarily, three reasons have been assigned by the Court below while dismissing the applications i.e. (i) Reliance has been placed upon the decision of the Hon'ble Supreme Court in **Sarbjit Singh and another v. State of Punjab , 2009(3) RCR (Criminal) 388** and it has been observed that the power under Section 319 of the Code of Criminal Procedure is to be exercised in exceptional cases when the evidence on record is of such nature and the same having gone unrebutted would be sufficient

to convict the accused sought to be summoned as additional accused. (ii) It has been observed by the Court below that in the absence of cross-examination of the Investigating Officer and other persons who had investigated the present case, an application for summoning of additional accused cannot be allowed. (iii) The applications have been dismissed also on the reasoning that even though the statements of the prosecution witnesses do ascribe a specific role/injury to the persons sought to be summoned as additional accused, but if such prayer is allowed, then almost all the family members of the accused party would be summoned and as such, nobody would be left in the family.

8. Learned counsel for the parties have been heard at length.

9. Section 319 of the Code of Criminal Procedure is quoted hereunder:

“319 Cr.P.C. - 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 the 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.”

10. The scope and extent of the powers of the Court to arraign any person as an accused during the course of enquiry or trial under Section 319 of the Code of Criminal Procedure came to be considered by the Hon'ble Supreme Court of India in a recent judgment in **Hardeep Singh v. State of Punjab and others, 2014 (1) RCR (Criminal) 623**. Having noticed a number of judicial precedents on the issue including the judgment rendered in **Sarbjit Singh's** case (*supra*), it was held as follows:

“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.

Thus, we hold that though only a prima facie case is to be established from the 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."

11. Clearly, the impugned orders in both these connected revision petitions declining the applications submitted under

Section 319 of the Code of Criminal Procedure and the reasoning adopted therein goes against the dictum as laid down by the Hon'ble Apex Court in **Hardeep Singh's** case (supra). The impugned orders, as such, cannot sustain.

12. Accordingly, both the revision petitions are allowed and the impugned orders dated 15.10.2013 passed by the learned Additional Sessions Judge, Nuh are set aside. Both the cases are remitted back to the trial Court to re-consider the issue in the light of the parameters laid down for exercise of the powers under Section 319 of the Code of Criminal Procedure by the Hon'ble Apex Court in **Hardeep Singh's** case (supra) and as noticed hereinabove. A fresh order be passed within a period of three months from the date of passing of this order after hearing the parties concerned.

13. It is clarified that the directions contained in the present order to re-consider the matter may not be construed that this Court has in any manner expressed any opinion as regards the private respondents in these two connected petitions to be summoned as additional accused. Such aspect is to be dealt with by the trial Court at the stage of passing the orders afresh and on merits.

14. Disposed of accordingly.

(**TEJINDER SINGH DHINDSA**)
JUDGE

May 06, 2015

SRM

Note: Whether referred to Reporter? (Yes/No)