

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

CRR No.3996 of 2013 (O&M)

Date of decision: 9th July, 2015

Bhartho Devi

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Bikram Chaudhary, Advocate
for the petitioner.

Mr. Munish Sharma, Asstt. Advocate General, Haryana.

Mr. Abhishek Singh, Advocate
for respondents No.2 to 6.

FATEH DEEP SINGH, J.

Initially criminal case by way of FIR No.38 dated 24.03.2009 under Section 457/380/427/506 IPC was registered at Police Station Kalayat, District Kaithal against Bhajan Lal, Karambir, Mahender, Pal and Balraj on the statement of the complainant Lachhman. On presentation of the report under Section 173 Cr.P.C. it transpired that during the course of inquiry, Harbir, Sanju, Parveen and Giano Devi were found innocent and placed in column No.2, and

challan against accused Bhajan Lal, Karambir, Mahender, Pal and Balraj was presented. It was thereafter, an application under Section 319 Cr.P.C. was moved for summoning of additional accused Harbir, Gian Chand, Sanju, Parveen and Giano Devi by the prosecution. The Court of learned Judicial Magistrate 1st Class, Kaithal vide impugned order dated 20.11.2013 dismissed this application. It is against this finding the revisionist Bhartho Devi claiming herself to be one of the eye-witnesses of the incident and wife of complainant Lachhman, has come up in this revision petition challenging the very legality and propriety of the same.

Heard Mr. Bikram Chaudhary, Advocate for the revisionist; Mr. Munish Sharma, Assistant Advocate General, Haryana on behalf of the State/respondent No.1 and Mr. Abhishek Singh, Advocate for respondents No.2 to 6.

The framers of Criminal Procedure Code in their wisdom have created provision by way of Section 319 Cr.P.C. empowering the Courts during the course of inquiry or trial of an offence power to summon where the Court finds and it appears to it that any person not being an 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.

There has been repeated disconcordant interpretation of these provisions throughout and in the case of **‘Ranjit Singh v. State of Punjab’ 1998(4) RCR (Criminal) 552 SC**, the Hon’ble Supreme Court of India had laid down the proposition that the Sessions Court has power to add new accused to face trial and can do so after collecting evidence and not entire evidence. However, this Court in the case of **‘Teja Singh v. State of Punjab’ 2000 (2) RCR (Criminal) 652** has differed with the ratio laid down in **Ranjit Singh’s case (ibid)** holding that a person can be summoned directly under Section 319 Cr.P.C. without recording evidence and thus, reflects the controversy surrounding this interpretation, and therefore, the matter was referred to a Constitution Bench of the Hon’ble Supreme Court which gave its findings in **‘Dharam Pal v. State of Haryana’ 2013(3) RCR (Criminal) 787 SC**.

A larger Bench of the Hon’ble Apex Court in the case of **‘Hardeep Singh v. State of Punjab and others’ reported in 2014(1) RCR (Criminal) 623**, whereby a bunch of petitions from various High Courts were collectively taken up by way of reference, wherein the main question that came up for decision had arisen out of a variety of views having been expressed by the Hon’ble Supreme Court and several other High Courts on the scope and extent of the powers under Section 319 Cr.P.C. so as to resolve the conflict that has come across. In **Hardeep Singh’s case (ibid)**, Hon’ble the Apex Court

considering that Court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and coming to the conclusion that the Legislature cannot be presumed to have imagined of the circumstances that the interpretation of an enactment would face during the course of time and therefore, holding that it is the duty of the Court to give full effect to the words used by the Legislature so as to encompass any situation which the Court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot-free by being not arraigned in the trial in spite of possibility of his complicity which can be gathered on the basis of the evidence.

Even way back in the case of '**State of U.P. v. Anil Kumar**' AIR 1988 SC 1998, Hon'ble the Supreme Court has held that it is very much the responsibility of the Court to punish the guilty as it is its responsibility to protect the innocent. In doing so, the courts have to delineate the powers under Sections 193 and 319 Cr.P.C.

While referring the matter to the Constitution Bench in **Dharam Pal's case (ibid)** the ratio laid down in '**Kishan Singh v. State of Bihar**' 1993 Criminal Law Journal 1700 (SC) expounding the expression of powers under Section 193 Cr.P.C. was upheld and thus, in **Hardeep Singh's case (ibid)**, the Hon'ble Supreme Court has kept in mind the interpretation of the ambit of Section 319 Cr.P.C. reiterating its earlier ratio in the case of '**Rohitesh Kumar v. Om**

Prakash Sharma' 2013(1) SCT 537 has expressed its opinion that by no means it can be said that provisions of Section 319 Cr.P.C. can be pressed into service during the process of "inquiry" and holding that after the filing of the chargesheet the Court reaches the stage of inquiry and after framing of the charges the trial commences and therefore, expressed its view that powers under Section 319 Cr.P.C. can be **exercised at any time after chargesheet is filed and before the pronouncement of judgment except during the stage of Sections 207/208 Cr.P.C. which was termed to be a pre-trial stage,** and further distinction was made in a complaint case where provisions under Sections 200, 201 and 202 Cr.P.C. were applicable holding that the complaint case is a distinct category of criminal trial where some sort of evidence in strict legal sense of Section 3 of the Evidence Act comes before the Court and therefore, held that there seemingly was no restriction in the provisions of Section 319 Cr.P.C. so as to preclude such evidence as coming before the Court. In complaint cases even before the charges have been framed or the process has been issued. Expressing its opinion at that stage, as there is no accused before the Court such evidence can be used only to corroborate the evidence recorded during the trial for the purposes of Section 319 Cr.P.C. if so required.

Thus, it appears from this interpretation that the provisions of Section 319 Cr.P.C. are enabling in nature for doing justice and

ensuring that the persons who ought to have been tried are also tried and therefore, came to the decision that application of this provision under Section 319 Cr.P.C. at the stage of inquiry is to be understood and exercised on the basis of **evidence adduced before the Court during trial.**

Lastly, their Lordships have drawn the conclusion that apart from the evidence recorded during the trial, **any material that has been received by the Court after cognizance is taken and before the trial commences can be utilized only for corroboration and to support the evidence recorded by the Court to invoke the powers under Section 319 Cr.P.C.**

Cautioning the courts, it was held that these powers are discretionary and extraordinary powers and have to be exercised sparingly and only in those cases where circumstances of the case so warrant and not on the premise that some other person may also be guilty of committing that offence and therefore, emphasis is on strong and cogent evidence against such a person from the evidence led before the Court that such a power needs to be exercised.

Reverting back to the instant case, it is significant to observe here that the FIR has been recorded at the instance of Lachhman, husband of the present petitioner, who claims and admits that he was away to the village of his daughter when the occurrence took place and therefore, harbours around the element of hearsay. No

doubt, an FIR need not be recorded by an eye-witness and it can be by any one who is conversant with the facts as has been laid down in **‘Som Pal v. State of Haryana’ 1997(3) RCR (Criminal) 149** but having regard to the trend, especially in the rural areas of roping in maximum number of persons for political reasons as well as for personal vengeance, the courts have to guard against misuse of such a provision. The prosecution claims and so is its stand as has been argued that only petitioner Bhartho Devi, wife of the complainant, was present at the house when the occurrence has taken place on the night of 08.03.2009. Her statement under Section 161 Cr.P.C. as has been conceded even by the State was recorded on 25.03.2009 after a delay of almost 17 days which further cautions the Court to separate the wheat from the chaff, else it will run contrary to dispensation of justice. A close look at this statement which has been brought to the notice of this Court shows that Bhartho Devi has named five persons Bhajan Lal, Mohinder, Karambir, Pal and Balraj, who have entered her plot so claimed to have been purchased by her husband Lachhman in the year 1994 from accused Bhajan Lal, and demolished her dwelling unit and took away the articles and has merely added that they were accompanied by five/six persons who were standing outside in the street. It has been emphatically stressed by learned counsel for the accused that neither these persons have been got identified nor named and therefore is a distressing feature in the prosecution story.

No doubt, in her deposition as PW2, Bhartho Devi has sought to implicate by naming Gian, Harbir, Paul, Mohinder, Balraj, Parveen, Giano, two boys namely Parveen and Sandeep, Karambir and Bhajan Lal (sic). As has been emphasised by learned counsel for the accused there is a marked material improvement before the Court thus, certainly reflects the eagerness of this witness to rope in the entire family, are matters which certainly impinge the judicial conscience and to hold that all was not well and that the subsequent statement of Bhartho Devi before the Court was not bonafide and truthful due to material improvement. The sinister design whereby initially she has named only Bhajan Lal, Mohinder, Karambir, Pal and Balraj and there is no evidence till date on the record which can be cogent and of reliable nature regarding role or involvement of Harbir, Gian Chand, Sanju, Parveen and Giano who are sought to be summoned by exercise of powers under Section 319 Cr.P.C.

The learned Magistrate in its order has rightly held that the necessary ingredients for initiation of action in issuing process consisting of prima-facie case, reasonable grounds to believe, if the Court is satisfied, if it appears from the evidence, reasonable doubt, and to the satisfaction of the Court; are certainly missing and there is no prima-facie evidence against them.

Way back in **AIR 1963 SC 1430** in the case of '**Chandra Deo Singh v. Prokash Chandra Bose**' which was subsequently

relied upon in **AIR 1976 SC 1947** in the case of '**Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi**' it was laid down by Hon'ble the Supreme Court that at the stage of issuing process against accused, the Magistrate is mainly concerned with the allegations or the evidence led in support of the same and therefore, the tests of prima-facie case as enunciated in '**R.S. Nayak v. A.R. Antulay**' reported in **AIR 1986 SC 2045** were the factors under consideration.

In the instant case applying these tests, case of the prosecution nowhere qualifies the tests so laid down. Though not much stress has been laid that being a State case the complainant has remained a mute spectator in not filing the instant revision and rather one of the eye-witnesses has come up before this Court and sought to doubt over her locus-standi in filing of the instant petition.

Thus, a million dollar question arises in the mind of the Court, can such a power be exercised at the instance of a person who is neither the complainant nor the State had thought it prudent to avail of this remedy and thus, allow an alien person to wreak vengeance by such a recourse to law. The Hon'ble Supreme Court in the case of '**Thakur Ram v. State of Bihar**' **AIR 1966 SC 172** interpreting the provisions of Section 437 of the Code of Criminal Procedure, 1898 (old) which corresponds to Section 401 Cr.P.C. (of amended Code) had expressed its opinion by holding that where a case has proceeded on a police report, a private party has really no locus-standi holding

further that no doubt the jurisdiction of the Court in revision is very wide and can be taken up suo-motu, and expressed the view that a criminal law is not to be used as an instrument of wrecking private vengeance by an aggrieved party against the person who according to that party had caused injury to it. It was on the principle that the State is the custodian of social interests of the community at large and so it is for the State to take all steps necessary for bringing the person who has acted against social interests of the community to book and which view was reiterated subsequently in **AIR 1973 SC 1274** in the case of **‘Chaganti Kotaiah and others v. Gogineni Venkateshwara Rao and another’** followed by decision of the Hon’ble Supreme Court in the case of **‘Satyendra Nath Dutta and another v. Ram Narain’ AIR 1975 SC 580** and which decision was based on an earlier view reported in **AIR 1951 SC 196** titled as **‘Stephens v. Nosibolla’**. Even in recent views, the Hon’ble Supreme Court in the cases of **‘Sheetala Prasad v. Sri Kant’** reported in **AIR 2010 SC 1140** and **‘Kaptan Singh v. State of Madhya Pradesh’ 1997(4) SCC 211**, has discouraged private individual from invoking the jurisdiction of the Court under these provisions.

No doubt, the revisionist before this Court is an eye-witness as well as wife of the complainant but that does not in any manner justify her invocation, especially when neither public interest demands nor the State has thought it prudent to exercise its right over

it. Thus, from it all ensues that the present recourse is impregnated with this element of personal vengeance than of a legal necessity and therefore, locus-standi of the revisionist Bhartho Devi to file the instant revision petition is also not there.

In view of the foregoing discussions and conclusions drawn, the findings given by the learned Judicial Magistrate 1st Class dated 20.11.2013 were legally firm and that finding no illegality and perversity in those findings the same needs to be upheld. The revision petition being without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

July 9, 2015
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