

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Revision No. 4024 of 2013 (O&M)
Date of Decision: 17.8.2015.**

Dharambir

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Gautam Dutt, Advocate
for the petitioner.

Ms. Mahima, AAG, Haryana.

Mr. Rakesh Nehra, Advocate
for respondents No. 2 to 9.

SABINA, J.

Petitioner has filed this petition under Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) challenging the order dated 21.11.2013 whereby application moved by the prosecution under Section 319 Cr.P.C., was dismissed.

Amended memo of parties is taken on record.

Learned counsel for the petitioner has submitted that respondents No. 2 to 9 were liable to be summoned as additional accused to face the trial as they had duly participated in the occurrence.

Learned counsel for respondents No. 2 to 9, on the other hand, has opposed the petition and has submitted that the said respondents were being sought to be falsely involved in this case.

In the present case, after investigation of the case,

challan was presented against accused Jagdish, Chander Pal and Purshotam. During the pendency of the trial, prosecution moved an application under Section 319 Cr.P.C. for summoning respondents No. 2 to 9 as additional accused. Vide the impugned order dated 21.11.2013, the said application was dismissed. Hence, the present petition by the petitioner.

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 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?

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.

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 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.

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

Annexure P-1 is the statement of Dharambir-petitioner, recorded during trial. A perusal of the same reveals that so far as respondents No. 6 and 7 are concerned, there are specific allegations against the said persons. As per PW-1, respondent No. 6 Mahesh had given an iron rod blow on the back of Viresh whereas respondent No. 7 Shiv Kumar had given an iron rod blow on the head of the petitioner above the left eyebrow. So far as the other respondents i.e. respondents No. 2 to 5, 8 and 9 are concerned, no specific injury has been attributed to the said

respondents. Hence, respondents No. 2 to 5, 8 and 9 were rightly not summoned by the Trial Court to face the trial as additional accused. However, the Trial Court fell in error while dismissing the application moved by the prosecution under Section 319 Cr.P.C. for summoning respondents No. 6 and 7 as additional accused as specific injuries were attributed to the said respondents.

Accordingly, this petition is partly allowed. Consequently, the application moved by the prosecution under Section 319 Cr.P.C. is allowed to the extent that respondents No. 6 and 7 be summoned to face the trial as additional accused.

**(SABINA)
JUDGE**

**August 17, 2015
Gurpreet**