

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.2132 of 2015 (O&M)
Date of Decision:- 30.10.2015

Charanjit Kaur @ Karamjit Kaur

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Gurcharan Singh, Advocate,
for the petitioner.

Mr. Varun Sharma, A.A.G., Punjab
for the State.

Mr. D.S. Brar, Advocate
for respondent No.2.

SHEKHER DHAWAN, J.

Present revision petition against order dated 18.03.2015 whereby the petitioner was summoned to face the trial as an additional accused as per provisions of Section 319 of Code of Criminal Procedure.

2. Relevant facts of the case that accused Kulwant Singh and Davinder Singh were facing the trial for the commission of offences under Sections 302 read with Section 34 IPC in case FIR No.111 dated 23.11.2012, registered at Police Station Doraha, District Ludhiana. As per

application filed under Section 319 Cr.P.C., Charanjit Kaur alias Karamnit Kaur wife of Kulwant Singh, had hatched a criminal conspiracy to take illegal possession of the land, which was in possession of complainant and her son Balwinder Singh (since deceased). As per complainant, it was specifically mentioned in FIR that Charanjit Kaur along with accused and two unidentified persons had gone to the place of occurrence. Charanjit Kaur was empty handed and raised '*lalkara*' to eliminate Balwinder Singh. Accused Kulwant Singh and Davinder Singh fired at Balwinder Singh from their respective pistol and .12 bore gun killing him on the spot. Complainant Harbans Kaur as PW1 fully supported and corroborated the version as mentioned in the FIR and as such Charanjit Kaur is also an accused in the case and she be summoned as co-accused

3. After hearing both the sides, learned trial Judge passed order dated 18.03.2015 thereby ordering Charanjit Kaur @ Karamjit Kaur to face trial for commission of offence under Section 302 read with Section 34 IPC along with accused Kulwant Singh and Davinder Singh, who are already facing the trial.

4. Aggrieved of passing of said order, revisionist Charanjit Kaur @ Karamjit Kaur is before this Court.

5. Learned counsel for the petitioner submitted that order dated 18.03.2015 is liable to set aside because petitioner Charanjit Kaur was initially named in the FIR but kept in Column No.2. On inquiry by police, she was found innocent. Thereafter, there was no material before the Court to summon her as an additional accused. Learned trial Judge has placed reliance upon statement of PW-I and that statement is just examination-

in-chief of Harbans Kaur complainant as PW1 and even cross-examination has not been completed. That way, evidence and material available on the file before learned trial Judge was not sufficient to summon Charanjit Kaur as additional accused in this case and there are no findings by learned trial Judge that there are fair chances of conviction of petitioner for the offences alleged against him and as such the order dated 18.03.2015 is liable to be set aside. On this point, reliance was placed upon judgment from Hon'ble Supreme Court in case Mohd. Shafi Vs. Mohd. Rafiq and another, 2007 (2) R.C.R. (Criminal) 762, wherein Hon'ble Supreme Court observed that a Court exercises its discretionary jurisdiction in terms of Section 319 Cr.P.C., the Court must arrive at the satisfaction that there exists a possibility that the accused so summoned in all likelihood would be convicted. Such satisfaction could be arrived at, inter-alia, upon completion of the cross-examination of the said witness. On the same point, reliance was placed upon judgments from Hon'ble Supreme Court in cases Palanisamy Gounder and another Vs. State Represented by Inspector of Police, 2006(2) R.C.R. (Criminal) 235; Kailash Vs. State of Rajasthan and another, 2008(2) R.C.R. (Criminal) 200; Lal Suraj @ Suraj Singh and another Vs. State of Jharkhand, 2009(1) R.C.R. (Criminal) 504 and Sarojben Ashwinkumar Shah etc. Vs. State of Gujarat and others, 2011(3) R.C.R. (Criminal) 852.

6. Learned State counsel as well as learned counsel representing complainant submitted that learned trial Judge has rightly exercised jurisdiction vested in it while accepting the application under Section 319 Cr.P.C. because while passing such an order, the Court to just see the

proceedings done by the police as well as entire material available on file including statement of witnesses recorded before the Court and for that purpose law does not require that cross-examination of witnesses must be completed before passing such an order. The present petition is without any merit and same be dismissed.

7. Having considered the submissions made by learned counsel for the parties and law laid down by Hon'ble Supreme Court in above referred judgments, this Court is of the considered view that power under Section 319 Cr.P.C. to summon any person as an additional accused is to be lawfully exercised only by the court and not by any officer not acting as a Court. That way, only a Court of Sessions or a Court of Magistrate performing the duties as a court under the Cr.P.C. can utilise the material before it and for that purpose the Court can place reliance upon material available during trial and inquiry. More so, summoning a person as additional accused is within the domain of trial Court because Section 319 Cr.P.C. confers original jurisdiction upon the Sessions Court to add an accused where the case has been committed. Such a power under Section 319 Cr.P.C. can be exercised during the course of inquiry and trial, after filing of charge-sheet and before the pronouncement of judgment.

8. Similar matter was before Larger Bench of Hon'ble Apex Court in case **Hardeep Singh Vs. State of Punjab and others, 2014(1) ADJ 727**, wherein, Hon'ble Supreme Court observed that 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 would be required

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. For that purpose, the Court has the power to summon 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. While dealing with evidentiary value of statement of the witnesses before the trial Judge without cross-examination having been done, Hon'ble Supreme Court observed that for the purpose of deciding application 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.

9. In view of above law laid down by Hon'ble Supreme Court and facts of the case that learned trial Judge has already applied its judicious mind and exercised the jurisdiction lawfully vested in it while passing order dated 18.03.2015 on application under Section 319 Cr.P.C. For that purpose, learned trial Judge considered the material before it i.e. report under Section 173 Cr.P.C. and statement of complainant as PW-1. There is absolutely no illegality, calling for setting aside the said order, by invoking

the revisional jurisdiction of this Court by way of present revision petition.

10. Resultantly, the present revision petition being devoid of merit stands dismissed.

October 30, 2015
naresh.k

(SHEKHER DHAWAN)
JUDGE