

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

CRR No. 3087 OF 2015

Date of Decision: 06.10.2015

State of Haryana

--Petitioner.

Vs.

Mohit

--Respondent.

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Kapil Aggarwal, Additional A.G. Haryana.

RAMESHWAR SINGH MALIK J. (ORAL)

Present criminal revision petition is directed against the the impugned order dated 10.11.2014 passed by the learned Principal Magistrate, Juvenile Justice Board, Sonapat, whereby an application moved by the petitioner-State under Section 319 of the Code of Criminal Procedure ('Cr.P.C.' for short), was dismissed.

Learned counsel for the State-petitioner submits that there was sufficient and cogent evidence available on record enabling the learned court below to exercise its jurisdiction under Section 319 Cr.P.C. However, since the learned Principal Magistrate, Juvenile Justice Board, failed to appreciate the evidence available on record, the impugned order has resulted in miscarriage of justice and the same is liable to be set aside. He prays for allowing the present petition.

Having heard the learned counsel for the petitioner at

considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the fact situation obtaining in the present case, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A bare reading of the impugned order would show that learned court below has examined, considered and appreciated each and every relevant aspect of the matter in the correct perspective, before arriving at a judicious conclusion. In fact, the prosecutrix has been changing her stand from time to time, as per her own suitability, because of which the learned Principal Magistrate has rightly held that, in such a situation, it was not appropriate to summon the additional accused to face the criminal trial. Having said that, this Court feels no hesitation to conclude that learned trial court would have exceeded its jurisdiction, had the application under Section 319 Cr.P.C. would have been allowed, in such a fact situation as obtaining in the present case. Thus, the impugned order deserves to be upheld.

The impugned order passed by the learned court below has been found to have been passed in consonance with the law laid down by a Constitution Bench of the Hon'ble Supreme Court in Hardeep Singh Vs. State of Punjab and others, 2014 (3) SCC 92.

The Hon'ble Supreme Court, in para 49 to 53 of its

judgment in Hardeep Singh's case (supra), after a detailed discussion on the issue and referring to all the earlier important judgments on Section 319 Cr.P.C., with a particular reference to its earlier Constitution Bench Judgment in Dharampal Vs. State of Haryana, observed as under:-

“It is thus aptly clear that until and unless the case reaches the stage of inquiry or trial by the court, the power under Section 319 Cr.P.C. cannot be exercised. In fact, this proposition does not seem to have been disturbed by the Constitution Bench in **Dharam Pal** (CB). The dispute therein was resolved visualizing a situation wherein the court was concerned with procedural delay and was of the opinion that the Sessions Court should not necessarily wait till the stage of Section 319 Cr.P.C. is reached to direct a person, not facing trial, to appear and face trial as an accused. We are in full agreement with the interpretation given by the Constitution Bench that Section 193 Cr.P.C. confers power of original jurisdiction upon the Sessions Court to add an accused once the case has been committed to it.

In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor the legislature could have contemplated this inasmuch as the stage for evidence has not yet

arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage *prima facie* can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 Cr.P.C.

Accordingly, we hold that the court can exercise the power under Section 319 Cr.P.C. only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained herein above.

There is yet another set of provisions which form part of inquiry relevant for the purposes of Section 319 Cr.P.C. i.e. provisions of Sections

200, 201, 202, etc. Cr.P.C. applicable in the case of complaint cases. As has been discussed herein, evidence means evidence adduced before the court. Complaint cases is a distinct category of criminal trial where some sort of evidence in the strict legal sense of Section 3 of the Evidence Act 1872, (hereinafter referred to as the 'Evidence Act') comes before the court. There does not seem to be any 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 charges have been framed or the process has been issued. But 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 purpose of Section 319 Cr.P.C., if so required.

What is essential for the purpose of the section is that there should appear some evidence against a person not proceeded against and the stage of the proceedings is irrelevant. Where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well, Section 319 Cr.P.C. acts as an empowering provision

enabling the court/Magistrate to initiate proceedings against such other persons. The purpose of Section 319 Cr.P.C. is to do complete justice and to ensure that persons who ought to have been tried as well are also tried. Therefore, there does not appear to be any difficulty in invoking powers of Section 319 Cr.P.C. at the stage of trial in a complaint case when the evidence of the complainant as well as his witnesses is being recorded.

Thus, the application of the provisions of Section 319 Cr.P.C., at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 Cr.P.C. can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to hereinabove, adding a person as an accused, whose name has been mentioned in Column 2 of the charge sheet or any other person who might be an accomplice.”

What to talk of more than a prima facie case, in the present case, not even a prima facie case was found to be made out against the respondent, so as to enable the learned trial court to exercise its jurisdiction under Section 319 Cr.P.C. In this view of the matter, it can be safely concluded that learned trial court committed no error of law, while passing the impugned order and the same

deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present criminal revision is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, instant criminal revision petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

06.10.2015
AK Sharma