

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

CRR No.37 of 2015

Date of Decision: January 08, 2015

Madan Salhotra

.... Petitioner

vs.

State of Punjab and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Ms. Ravinder Kaur Manaise, Advocate
for the petitioner.

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

Kuldip Singh J.(Oral)

Impugned in the present revision petition is the order dated 12.12.2014 passed by learned Addl. Sessions Judge (A), Gurdaspur, vide which the application filed under Section 319 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') by the prosecution for summoning Shammi Kumar, respondent No.2 (in the present petition) as an additional accused, was dismissed.

A perusal of the FIR shows that the case was registered on the statement of one Rakesh Kumar, who had alleged that Raj Kumar armed with sword, Billa son of Indermohan armed with *datar*, Kaka armed with *datar*, Kali armed with *datar*, Madan Lal armed with basebat and Indermohan empty handed entered the house of the complainant.

On the exhortation raised by Indermohan, they caused injuries to Rakesh Kumar and in defence, his father Kashmiri Lal, brother Ramesh Kumar and paternal aunt Parmjit Kaur came forward to rescue him and caused injuries to the assailants.

It comes out that a cross case was also made out and recorded vide rapat No.22, dated 03.10.2011, under Sections 307, 324, 323, 148 and 149 of the Indian Penal Code, 1860. After the investigation, challan was presented against Rakesh Kumar @ Toni, Rakesh Kumar @ Mesha, Kashmiri Lal and Ankush Kumar. Later on, supplementary challan was presented against Aman Kumar. Respondent No.2 Shammi Kumar was declared innocent and placed in column No.2.

During the trial, the revisionist appeared as PW1, who made the statement, in which Shammi Kumar was named. Thereafter, the prosecution filed the present application under Section 319 Cr.P.C., which was dismissed vide impugned order dated 12.12.2014.

The copy of the statement made by the revisionist in the cross case would show that while specific role is attributed to the other accused having given blows with different weapons but only the role attributed to respondent No.2 Shammi Kumar is that he raised a *lalkara* 'to catch hold and teach them a lesson for messing with them'. No injury is attributed to him.

During investigation, respondent No.2-Shammi Kumar was declared innocent by the police. Even in the statement made by

the revisionist in the court, the same allegation has been levelled against respondent No.2- Shammi Kumar.

In “**Hardeep Singh vs. State of Punjab and others**” **2014 (1) R.C.R. (Criminal) 623**, the Five Judges Bench of Hon'ble the Supreme Court while examining the question as to what degree of satisfaction is required for invoking the powers under Section 319 Cr.P.C. made the following observations:

“ 98. 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.

99. 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 unrebutted, 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."

Therefore, it is clear that the powers under Section 319 Cr.P.C. are discretionary and extra ordinary powers and these are to be exercised sparingly.

In the present case, specific injuries were attributed to the other accused. Only exhortation was raised by respondent No.2- Shammi Kumar and no other overact was attributed to him while the remaining accused were giving injuries.

In these circumstances, learned Addl. Sessions Judge (A), Gurdaspur was justified in rejecting the application filed by the prosecution while exercising the powers under Section 319 Cr.P.C. Therefore, I do not find any illegality and perversity in the impugned order.

Accordingly, the revision petition is dismissed.

January 08, 2015
sarita

(KULDIP SINGH)
JUDGE