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

CRR No.3735 of 2014

Date of decision: August 25, 2015

Sanjay and another

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Gaurav Mohunta, Advocate
for the petitioners.

Ms. Mahima, AAG Haryana.

SABINA, J

Petitioners have filed this petition challenging the order dated 30.10.2014, whereby petitioners were summoned to face the trial as additional accused on an application moved by the prosecution for under Section 319 of Code of Criminal Procedure, 1973 ('Cr. P.C.' for short).

Prosecution story in brief is that on 30.04.2012, complainant had come to the Court along with her relatives. One black colour Pulsar motorcycle was parked outside the main gate of the Court. Two boys were sitting on the motorcycle, whereas, one boy was standing next to them. The person who was standing on the road, was Sanjay son of Gaje Singh. One of the boys, who was sitting on the motorcycle was son of Gaje Singh's sister Krishna wife of Ranbir Singh.

On seeing their car, Sanjay with an intention to kill, fired from

his gun at the complainant. As a result of this, complainant suffered an injury on her right shoulder. Thereafter, all the three boys sped away from the spot on the motorcycle.

After completion of investigation and necessary formalities, challan was presented against accused-Anand. During the pendency of the trial, prosecution moved an application under Section 319 Cr. P.C. for summoning the petitioners as additional accused. Trial Court allowed the said application vide order dated 30.10.2014. Hence, the present petition.

Learned counsel for the petitioner No.2 has submitted that the petitioner No.2 has been falsely involved in this case. In fact, from the cross-examination of the statement of the complainant, recorded during trial, it was evident that, although, she had stated in her examination-in-chief that the petitioner No.2 had accompanied the co-accused Sanjay, but in her cross-examination, she had named Vivek as the person who had accompanied the accused Sanjay. Vivek was the elder brother of the petitioner. Thus, the complainant had failed to name the petitioner No.2 as an accused.

Learned State counsel, on the other hand has opposed the petition.

Section 319 of 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 Court has ample power to summon any person as additional accused to face the trial with the accused already facing trial, if there is enough material on record to proceed against the said person.

Hon'ble 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.

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 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. 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."

In the present case, occurrence had taken place on 30.04.2012. In the FIR, although, the name of the petitioner No.2 has not specifically mentioned, but he has been described as son of Krishna wife of Ranbir. A perusal of Annexure P-1, statement of the complainant recorded during trial reveals that she has specifically named the petitioner No.2 as an accused. Rather she had denied in her cross-examination that she had ever alleged that Vivek son of Krishna was along with the accused Anand and Sanjay.

Since in the present case, allegations have been specifically levelled by the complainant that the petitioner

No.2 had also accompanied his co-accused at the time of occurrence and Sanjay-co-accused of the petitioner No.2 had fired at her, the learned trial Court had rightly ordered the summoning of the petitioners to face the trial as additional accused.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

August 25, 2015
mahavir