

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

**Criminal Revision No. 4019 of 2014
Date of decision : 22.04.2015**

Chander and another

..... Petitioners

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Jasdeep Singh Toor, Advocate
for the petitioner(s).

Mr. R.S.Doon, AAG, Haryana.

Mr. Sunny Bharadwaj, Advocate
for the complainant.

- 1. Whether Reporters of local papers 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?**

DARSHAN SINGH,J(Oral)

1. The present revision petition has been preferred against the order dated 13.11.2014 passed by the learned Additional Sessions Judge, Hissar vide which on the basis of an application moved by the prosecution under Section 319 Code of Criminal Procedure, 1973 (hereinafter called Cr.P.C). Petitioners Chander and Suman have been summoned to face the trial for the offences punishable

under Sections 302, 323, 452, 506 read with section 34 of Indian Penal Code, 1860 (hereinafter called IPC) as additional accused.

2. As per prosecution version, on 25.10.2011 at about 7.00 p.m accused Ved, Krishan, Rohtash, Kuldeep, Dharambir, Balwan (non-petitioners) the present petitioner and one Savitri criminally trespassed in the house of the complainant Ram Niwas and caused injuries to complainant Ram Niwas, his uncle Dilbag and Raj Kumar. Raj Kumar succumbed to the injuries. The case was registered on the statement of complainant Ram Niwas. On completion of the investigation, the report under Section 173 Cr.P.C was filed only against the non-petitioners. The present petitioners along with Savitri were found innocent.

3. During the course of trial an application under Section 319 Cr.P.C was moved by the prosecution for summoning the petitioners Chander and Suman and one Savitri wife of Dharambir as additional accused. The said application was contested by the non-petitioners.

4. Learned trial Court vide impugned order dated 13.11.2014 partly allowed the said application. The same was dismissed qua Smt. Savitri, whereas it was allowed qua the present petitioners and they were summoned to face the trial as additional accused.

5. Aggrieved of the aforesaid order the present revision petition has been preferred.

6. I have heard Mr. Jasdeep Singh Toor, Advocate learned counsel for the petitioners, Mr. R.S.Doon learned AAG for the State of Haryana and Mr. Sunny Bharadwaj, Advocate learned counsel for the complainant and have meticulously gone through the case file.

7. Learned counsel for the petitioners contended that petitioners were found innocent on the thorough investigation of the case. He contended that the powers under Section 319 Cr.P.C are to be sparingly exercised to meet out the ends of the justice. He contended that in the instant case there is no material to show the involvement of the petitioners. It is alleged that petitioner Chander has given a brick bat blow to Dilbag. But, the medico legal report of Dilbag is not available on record to show any such injury. The learned trial Court was itself doubtful about the role played by petitioner Suman, but still she has been summoned. A person can not be impleaded as an accused simply on the basis of doubt. He further contended that there was similar allegations against Smt. Savitri that she has also given the brick bat blows, but the application quaher has been dismissed. Thus, he pleaded that the impugned order is not sustainable in the eyes of law.

8. Per contra, learned State counsel assisted by learned counsel for the complainant contended that there are specific allegations against the present petitioners. Petitioner Chander has caused injuries to Dilbag by brick bats. Similarly, petitioner Suman has attacked the deceased with brick bats. They have very much participated in the present occurrence and were sharing the common object/intention and have been rightly summoned as additional accused by the learned trial Court as the yardstick to summon a person as an accused is only a prima-facie case. At that stage, it is not to be seen as to whether the case will result in conviction or not.

9. The aforesaid contentions have been duly considered.

Section 319 Cr.P.C reads as under:-

“319. 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 a fresh, and the 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.”

10. The provisions of Section 319 Cr.P.C is discretionary and an extra ordinary power given to the Court in order to do the complete justice. This extra ordinary power is to be exercised sparingly and only in the cases where the circumstances of the case so warrants. This extra ordinary power can not be exercised just on the asking of the prosecution or the complainant as the summoning of a person as an accused in a criminal case is a serious matter and adversely effects the liberty of a citizen. The Hon'ble Apex Court in case **Palanisamy Gounder & Anr V. State, represented by Inspector of Police, (2005) 12 SCC 327,** has deprecated the practice of invoking the power under Section 319 Cr.P.C just to conduct a fishing inquiry in the absence of any valid ground to proceed against the persons ought to be summoned as additional accused.

11. The constitution Bench of the Hon'ble Apex Court

in case **Hardeep Singh Vs. State of Punjab and others,**
2014(1) RCR (Criminal) 623 has summed up the legal position with respect to the scope of the powers to be exercised under Section 319 Cr.P.C. The Hon'ble Apex Court has laid down as under:-

“Power under Section 319 Cr.P.C is a discretionary and 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.

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 un rebutted, 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 guilty of the accused."

12. As per the aforesaid ratio of law, the discretionary powers under Section 319 Cr.P.C are to be sparingly exercised if the circumstances of the case so warrants. These powers can not be exercised simply on the ground that the trial Court is of the opinion that some other person may also be guilty of committing the offence. Such powers should be exercised only where strong and cogent evidences emerges on record and should not be exercised in casual and cavalier manner. It requires much strong evidence than mere probability of the complicity of person the test has to be applied is one which is more than prima-facie as exercised at the time of framing charges, but short of satisfaction to an extent that the evidence if goes unrebutted would lead to conviction. In view of the aforesaid ratio of law laid down by the Hon'ble Apex Court we are to examine the case in hand.

13. Before moving the application under Section 319

Cr.P.C, the prosecution has examined Ram Niwas complainant as PW-1. The relevant portion of the statement of Ram Niwas is as under:-

“On 25.10.11, at around 7.00 p.m., I alongwith my uncle Raj Kumar and my uncle Dilbag were sitting on a cot in the animal room of my house and were talking with each other. At that time, Ved, Krishan, Rohtash, Kuldeep, Dharambir, Balwan, Chander, Suman and Savitri entered that room. Ved, Krishan, Rohtash and Kuldeep were armed with Jelli whereas Dharambir, Balwan, Chander, Suman and Savitri were armed with brick-bats. Ved, on entering the room, raised a lalkara that they would teach us a lesson for instituting the case. Ved gave a Jelling blow on my head from lathi portion, Krishan gave a Jelli blow on my left elbow causing my latent (Gum) injury. Rohtash gave a Jelli blow on the head of Dilbag form lathi portion. Chander gave a brick bat blow on the right leg of Dilag causing him a latent injury, Kuldeep gave a Jelli blow on the head of Raj Kumar from lathi portion. Suman threw a brick bat towards Raj Kumar which missed him. Dharambir and Savitri threw brick bats towards me, Raj Kumar and Dilbhag but we saved ourselves. Thereafter Balwan gave brick bat blow to me causing me a latent injury. Meanwhile Birmati wife of Raj Kumar came there and intervened to save us from them, at which, they also caused injuries to her with their

weapons. We raised hue and cry “Mar dia Mar dia”, which attracted the neighbourers there armed with lathi and danda. The neighbourers tried to save us from them and in that process, they also caused, injuries to Krishan and Rohtash with lathi and danda. Thereafter, all the assailants fled away from the spot alongwith their Jelli and while running away, they threatened to kill us if they would get an opportunity.”

14. It is pertinent to mention that the name of petitioner Chander does not figure in the FIR. As per the statement of the complainant recorded in the Court, petitioner Chander, Suman and Savitri were armed with brick bats. It is alleged that Chander gave a brick bat blow on the right leg of Dilbag. This fact has not been disputed at bar by the learned State Counsel as well as learned counsel for the complainant that no Medico Legal Report of Dilbag is available on record to show any injury on his right leg attributed to petitioner Chander. Similarly, PW-1 has stated that petitioner Suman threw a brick bat towards Raj Kumar, which missed him. So, the complainant in his statement on oath has also not attributed any injury to petitioner Suman on the person of deceased Raj Kumar. Rather, it is stated that the brick bat thrown by her did not hit Raj Kumar. The observations of the learned trial Court are not borne out from the record. The learned trial Court in the impugned

order has observed as under:-

“Similarly qua Smt. Suman, question is doubtful whether injury was inflicted on the head of deceased Raj Kumar by accused Kuldeep or Smt. Suman. At this stage Smt. Suman cannot be given clean chit being innocent.”

15. There is the specific statement of complainant Ram Niwas that Kuldeep accused has given a jelli blow on the head of Raj Kumar. So, the injury on the head of deceased Raj Kumar has been categorically attributed to accused Kuldeep. Thus, it is not known as to how the learned trial Court observed that question is doubtful whether the injury was inflicted on the head of deceased Raj Kumar by accused Kuldeep or Suman. The learned trial Court itself is doubtful whether injury inflicted on the head of deceased Raj Kumar has been caused by accused Kuldeep or Suman. Meaning thereby petitioner Suman has only been summoned by learned trial Court to face the trial for the serious charges of murder simply on the basis of doubt, which is not permissible in law. Moreover, there is not even any scope for doubt as it is a clear case of the prosecution that the injury on the head of deceased Ram Niwas has been caused by Kuldeep with a jelli and brick bat allegedly thrown by Suman did not hit the deceased.

16. As already mentioned there is no medical

evidence to support the allegations against petitioner Chander that she has given a brick bat blow on the right leg of prosecution witness Dilbag. Simply the statement of the complainant Ram Niwas will not meet out the standards laid down by the Hon'le Apex Court in Hardeep Singh's case (Supra) to invoke the extra-ordinary provisions of Section 319 Cr.P.C to summon the petitioners as additional accused.

17. It is pertinent to mention that there were similar allegations against Savitri that she was also armed with brick bat and threw the brick bat towards the complainant, deceased Raj Kumar and PW Dilbag, but they saved themselves. But, the application qua her has been dismissed by the learned trial Court. There was no reason to take the different view qua the present petitioners.

18. Thus, keeping in view of my aforesaid discussion, the present revision petition is hereby allowed and the impugned order dated 13.11.2014 summoning the present petitioners as an additional accused is hereby set aside.

22.04.2015

s.khan

**(DARSHAN SINGH)
JUDGE**