

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

CRR No. 532 of 2014
Date of decision : 13.05.2015

Sri Krishan		...Petitioner
	Versus	
State of Haryana and another		...Respondents

CRR No. 534 of 2014

Chandi Ram & another		...Petitioners
	Versus	
State of Haryana & another		...Respondents

CRR No. 1791 of 2014

Gurmeet Kaur		..Petitioner
	Versus	
State of Haryana and another		...Respondents

CRR No. 1342 of 2014

Pardeep Mor and another		..Petitioners
	Versus	
State of Haryana		...Respondents

CRR No. 3001 of 2014

Parminder		..Petitioner
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Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Ashwani Bakshi, Advocate
for the petitioner (in CRR-532 of 2014)

Mr. J.S.Bedi, Senior Advocate
with Mr. Lovekirat S. Chahal, Advocate
for the petitioners (in CRR-534 of 2014)

Mr. Sanjeev Sheokand, Advocate
for the petitioners (in CRR-1342 of 2014)

Mr. S.S.Kharab, Advocate for
Mr. Anil Malik, Advocate
for the petitioner (in CRR-1791 of 2014)

Mr. G.S.Chahal, Addl. AG, Haryana.

Mr. B.S.Sewak and Mr. Rajinder K. Mathur, Advocates
for the complainant.

Mr. Ramesh Chahal, Advocate
for the petitioner (in CRR-3001 of 2014)

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Amol Rattan Singh, J.

These are five revision petitions, filed by seven petitioners in all, which challenge the order of the learned Additional Sessions Judge, Jind, dated 29.01.2014, summoning the petitioners in these different petitions, as additional accused in FIR No. 22 of 28.01.2013, registered at Police Station, City, Narwana, for the alleged commission of offences punishable under sections 302/324/452/326/307/34 of the IPC, and Section

3 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The impugned order was passed on an application moved by the complainant in the FIR, one Ram Niwas, under Section 319 of the Cr.P.C.

2. Prior to that, after investigating into the complaint (FIR), the investigating agency had, in its report submitted under Section 173 Cr.P.C. to the trial Court, named one Darshan Singh, his wife Ram Ratti and his son Bhupender as the accused but had not named any of the present petitioners in the said report, finding them to have been not involved in the crime, though all of them had been named by the complainant as those who had attacked his parents, leading to the death of Mallo Devi, i.e. the complainant's mother, with injuries caused to his father, Tara Chand.

3. The reason for the attack, as given, is admitted to be a dispute over a plot of land. Darshan Singh (non-petitioner) alleged that it was in the illegal possession of the complainant, who, on the other hand, it was argued, claims ownership and alleges that Darshan Singh wants to take illegal possession of, despite the complainant having raised construction over it.

4. In the FIR, the complainant also gave a background of earlier incidents prior to the occurrence leading to the one that is the subject matter of the FIR out of which these proceedings arise.

A series of applications is stated to have been made by the complainant, to various functionaries of Government, alleging a threat to him and his family members' life and property, at the hands of Darshan Singh and his son, Bhupender.

5. It is stated in the FIR that on 31.10.2012, Darshan Singh tried to run the complainant over with his vehicle.

Thereafter, on 03.01.2013, Darshan Singh and his son, Bhupender, allegedly inflicted injuries on Ram Niwas, due to which he is stated to have fractured his leg and in respect of which also an FIR stood registered, but as per the complainant, the accused were not arrested.

6. As regards the occurrence in question, the relevant part of the FIR states as under:-

“..... they have tried to kill me time and again but every time I survived luckily and gave entire information to the Police. Because of this very enmity today on 28.01.2013 at about 05.00 P.M. Darshan Singh son of Dewan Singh, Caste Jat resident of Bhagat Singh Colony, Narwana and his son Bhupender, Ram Ratti wife of Darshan Singh, wife of Bhupender Singh, Parminder son of not known, Kuldeep Mor, Pardeep Mor sons of Rajender Mor, Ishwar Singh of Danoda, Hoshier Singh son of Mila Ram, Chandi Ram son of Mila Ram, Krishan son of Satya Narayan residents of Narwana came to my house alongwith 10/12 other persons when my brother Ram Rattan son of Tara Chand and my uncle Zile Singh son of Rajmal had come to meet me and my son Rajender was also sitting with us. Darshan was armed with Kulhara, Bhupender Singh Talwar, Parminder with Gandasa, Kuldeep with Gandasa, Pardeep with Kulhari, Ram Ratti with Gandasi, Bhupender Singh's wife with Gandasi and Krishan was armed with Gandasa. Immeditately on entering our house they attacked my mother and father. Darshan Singh gave a Kulhara blow on my mother's head, Bhupender gave Talwar blow on her head, Ram Ratti gave a Gandasa blow to my father Tara Chand, Bhupender's wife gave a Gandasa blow to my father and Hoshier Singh, Krishan, Chandi Ram, Ishwar Singh, Pardeep Mor, Kuldeep Mor, Parminder and all other also inflicted injuries

indiscriminately. When we ran towards them on hearing the noise all of them ran away with their respective weapons in their vehicles by raising lalkaras. Thereafter, we took care of our mother and father and took them to Govt. Hospital, Narwana after arranging a vehicle, where the doctor declared my mother Mallo Devi dead and after giving first aid to my father referred him to PGIMS, Rohtak because of excessive injuries. Above said persons Darshan Singh etc. have killed our mother after entering into our house armed with sharp weapons and under a common plan due to the enmity because of the plot and have inflicted injuries to my father. I have got recorded my statement to you in GH Narwana and have heard the same. It is correct.”

Attested

Suresh Pal Insp/SHO

P.S. Sdr.

Nrw/Dated 28.01.2013

7. Thus, as per the FIR, Darshan Singh gave a 'Kulhara' blow on the head of the deceased and Bhupender gave a 'Talwar' blow on her head. Ram Ratti (wife of Darshan Singh) and Bhupender Singh's wife (later named as Gurmeet Kaur, and now the petitioner in Criminal Revision No. 1791 of 2014) are stated to have given 'Gandasa' blows to the complainants' father and all the other named co-accused, i.e. Hoshiar Singh and Chandi Ram (petitioners in Criminal Revision No. 534 of 2014), Krishan @ Sri Krishan (petitioner in Criminal Revision No. 532 of 2014), Pardeep Mor and Kuldeep Mor (petitioners in Criminal Revision No. 1342 of 2014), as also Ishwar Singh (since deceased) and Parminder (petitioner in CRR No.3001 of 2014) were all attributed the role of inflicting injuries indiscriminately. The FIR does not speak specifically as to on whom these injuries were inflicted.

8. As per the post-mortem report, Mallo Devi deceased had two injuries on her person, (i) an incised wound on the left side of the occipito and parietal region which also discloses a fracture, and a hemorrhage in the brain tissue (ii) a dark contusion also on the left side of the face and head, which also reveal an underlying heamatoma.

Tara Chand, father of the complainant, is stated to have received three injuries on his person, all incised wounds, including two on his face and one on his head.

9. Thus, as pointed out by the learned Senior Counsel appearing for the petitioners in Civil Revision No. 534 of 2014, i.e. Chandi Ram and Hoshiar Singh, there were only five injuries inflicted in all, allegedly at the hands of 11 persons, all of whom, as per the FIR, are shown to be armed with sharp edged weapons and all of whom, allegedly, inflicted injuries indiscriminately.

10. He also submitted that by the time the application under Section 319 Cr.P.C. came to be filed by the complainant, he (complainant Ram Niwas), had already been called upon to testify before the trial Court and his cross-examination is stated to have been in progress, which was then deferred to 01.12.2013 on account of the application moved on that date.

11. The learned Additional Sessions Judge, vide the impugned order, while noticing that the complainant had named all of those sought to be summoned, in the FIR, and had also deposed specifically against all of them, recorded a prima facie satisfaction that the offences involved in the FIR had been committed also by them and as such they would also be required to face trial, and accordingly summoned them vide the impugned order.

While doing so, the trial Court referred to two judgments of this Court in Hakam Singh and another Vs. State of Punjab (2010) Vol-II RCR (Criminal) 443 & Satbir Singh Vs. Mohindro Devi and another 2011 (1) CCJ 433, as also three judgments of the Apex Court in Ram Pal Singh & others Vs. State of U.P. & Anr. 2009 (2) RCR (Criminal) 131; Hardeep Singh Vs. State of Punjab 2008 3 CCJ 263; & Suman Vs. State of Rajasthan and another 2009 (4) RCR (Criminal) 908.

12. After the filing of some of these petitions (but before CRR No. 1791 of 2014 was filed), the trial Court proceeded to frame charges against the accused originally named in the FIR, as also against the petitioners in these petitions. Thus, all the accused named in the FIR, other than the now deceased Ishwar Singh, stand charged in respect of all the offences hereintofores mentioned, vide the order of the learned Additional Sessions Judge dated 23.05.2014, which has been annexed along with an application moved on behalf of complainant Ram Niwas, in CRR No. 534 of 2014. (Though the complainant is not impleaded as a respondent in the said petition, he has been so impleaded in two other petitions, i.e. CRR No. 1791 of 2014 and CRR No. 534 of 2014).

13. Addressing arguments first, Mr. J.S.Bedi, learned Senior Counsel appearing for the petitioners in CRR 534 of 2014 (Chandi Ram & Hoshiar Singh) submitted that, firstly, these petitioners, as also the others, except Gurmeet Kaur (petitioner in CRR No. 1791 of 2014) and Parminder son of Khem Chand (petitioner in CRR No.3001 of 2014) were not even remotely connected with the dispute between those named in the report under Section 173 Cr.P.C., i.e. Darshan Singh, his wife Ram Ratti and son

Bhupender on the one hand, and the complainant Ram Niwas on the other. The dispute was on account of a piece of land whose ownership was disputed between Darshan Singh and Ram Niwas, with which none of the other accused, other than those from the family of Darshan Singh, would have any interest in. As such, for complete strangers to the dispute to jump into a fight, and in fact to attack Ram Niwas' family in his own home, armed with 'Swords' and 'Gandasas' would be a wholly irrational act.

14. He further submitted that, as a matter of fact, the complainant, Ram Niwas, taking advantage of a tragic situation, even though it was he who was affected by the death of his mother, decided to implicate all the other co-accused, only because he himself had an axe to grind with them, on different issues.

As regards Chandi Ram and Hoshiar Singh, Mr. Bedi contended that they have been implicated on account of a dispute which occurred in 2002 between them and Ram Niwas, in respect of which FIR No. 150 dated 04.09.2002 was registered at the behest of Ram Niwas against both of them, i.e. Chandi Ram and Hoshiar Singh, even leading to their conviction. However, as per learned Senior Counsel, Ram Niwas continued to bear a grudge against them and as such implicated them in the present FIR also.

Mr. Bedi further submitted in this regard that Chandi Ram and Hoshiar Singh belong to a scheduled caste and as such can have nothing in common with Darshan Singh and his family, who belong to a different caste, being 'Jats'.

He further contended that the occurrence admittedly having occurred at 05.00 P.M. on 28.01.2013 and the complaint having been

registered (leading to the FIR) only at 10.30 P.M., it gave enough time to the complainant to concoct a story involving persons other than the accused.

He next contended that even in the previous incident referred to by Ram Niwas in the FIR, i.e. with regard to threats in the year 2011, and the alleged incidents of 31.10.2012 and 03.01.2013, none of the other co-accused, except Darshan Singh and his son Bhupender, had been named. As such, for all the other co-accused to suddenly appear on the scene alongwith the prime accused, was entirely illogical and as such the allegations were only a result of the grudge already borne by Ram Niwas against the other accused.

Learned Senior Counsel also submitted that Chandi Ram is a retired Government employee and Hoshiar Singh is a school teacher. He further submitted that Chandi Ram is suffering from diabetes since long, and even on the date of occurrence his blood sugar record was diagnosed at a level of 4.68mg/dc, as can be seen from the medical report annexed with the petition.

15. Mr. Bedi next contended that even as per the disclosure statement made by accused Darshan Singh before the police (a copy of which has been annexed with the petition), he has categorically named only himself and his wife who had gone to Ram Niwas's house on 28.01.2013, in order to get the plot vacated and, upon a quarrel having ensued in that regard with the complainants' mother and father, he and his wife had attacked them, first by giving simple blows and slaps etc. and thereafter, upon the arrival of his son, Bhupender, with a 'Gandasa', it was he (Bhupender) who is stated to have attacked the deceased and injured her with the said weapon, after which all of them went away.

As such, Mr. Bedi submitted that even in the alleged disclosure statement made to the police, none of the petitioners in all these petitions had been named by Darshan Singh, and even Parminder Singh (petitioner in CRR No.3001 of 2014), was named only with regard to an earlier attack on Ram Niwas.

Hence, for all the above reasons, learned Senior Counsel submitted that the trial Court had wholly erred in summoning the petitioners.

Mr. Bedi also referred to the report of the Superintendent of Police, sought to be relied upon by learned counsel for the complainant in the application moved by him (seeking to place on record the said inquiry report, alongwith the testimony of the complainant before the trial Court, as also the order framing charges against all the accused).

In the said report of the Superintendent of Police, Hissar, on an enquiry entrusted to him upon a complaint being made by Ram Niwas against the police, it was recommended that the police officials looking into the complaints earlier submitted by Ram Niwas should be dealt with departmentally, in view of their inaction and obvious favouritism in favour of Darshan Singh.

Learned Senior Counsel submitted that though the report was being relied upon by the counsel for the complainant, even this report did not indict the petitioners.

He further submitted that even as per the law now laid down by the Supreme Court in **Hardeep Singh Vs. State of Punjab, (2014) 3 SCC 92,** (Constitution Bench), the trial Court is required to record more than

simply a prima facie opinion for summoning a person sought to be made an accused, on an application moved under Section 319 Cr.P.C.

Thus, as per learned Senior counsel, the trial Court wholly erred in summoning the petitioners by simply recording its prima-facie satisfaction that the petitioners were involved in the occurrence, after the police had not indicted them, after investigating the matter.

CRR No. 532 of 2014

16. Mr.Ashwani Bakshi, learned counsel appearing for the petitioner, Sri Krishan @ Krishan, first submitted that no specific role has been attributed to this petitioner either in the FIR, or even in the deposition of the complainant, as PW1, before the trial Court. Only a generalized allegation has been made against him, to the effect that he was also present at the spot with a weapon ('Gandasa') and along with others he inflicted injuries to the complainant's mother and father and then ran away.

Repeating what Mr. Bedi had also argued, learned counsel submitted that looking at the total of five injuries (two on the deceased and three on the injured Tara Chand), all of which have been attributed to specific persons, it is obvious that no body else could have caused any injuries and as such, even their presence at the spot is not proved because, as a matter of fact, they were not present but have been all roped in falsely.

17. Mr. Bakshi submitted that Sri Krishan has been so roped in because he stood as a witness in a case registered against the complainants' wife, i.e. FIR No. 215 dated 17.08.2012, registered in respect of offences punishable under Sections 454/380/411 of the IPC, at Police Station, City Narwana. Learned counsel submitted that this was very obvious from the

fact that the petitioner, Sri Krishan, stood as a witness in the aforesaid case, before the trial Court (seized of that trial) on 25.01.2013, and has been named as an accused on 28.01.2013 in the FIR out of which these proceedings arise. He further submitted that about 25 people were named in the FIR, with only five injuries inflicted on two persons, then as submitted also by Mr. Bedi, 'roping in' of innocent persons, was only too obvious. (It is to be noticed that actually 11 persons have been named in the FIR, qua the occurrence dated 28.01.2013.)

That case, after due trial, eventually ended in the acquittal of the complainant's wife.

Petitioner Sri Krishan stood as PW3 before the trial Court in that case and had stated that he was running a Kiryana shop, from which Pradeep Mor purchased a bag of sugar on 15.08.2012 against a bill (exhibited before that Court). As per the judgment of the learned SDJM, recovery of the said bag of sugar, which was stated to have been recovered after more than 2 months from the shop of the complainant's wife, was disbelieved by that Court on the basis of evidence and it was held, while acquitting the accused, that she (the complainant's wife, Krishna), had been falsely implicated in the case.

18. Mr. Bakshi further submitted that despite the acquittal of his wife, the complainant still nurtured a grudge against the petitioner for having stood as a witness in that case, even though he had not specifically stated anything against the complainant's wife and had only stated that Pardeep Mor had purchased sugar from his (Sri Krishans') shop. Other than the above, Mr. Bakshi reiterated the submissions made by the learned Senior Counsel, with regard to the delay in lodging of the FIR, as also the

fact that Darshan Singh, in his disclosure statement, did not name anybody else other than himself and his immediate family members.

CRR No. 1342 of 2014

19. Mr. Sanjeev Sheokand, learned counsel appearing for the petitioners in this case, i.e. Pardeep Mor and Kuldeep Mor sons of Rajender Mor, also submitted in tune with what Mr. Ashwani Bakshi submitted, to the effect that the petitioners, who are brothers, have been falsely implicated only because petitioner No. 1 had got an FIR registered against the complainants' wife, (the contents of which have already been discussed hereinabove). He, further, also reiterated the other submissions made by learned Senior Counsel, Mr. Bedi, as also by Mr. Bakshi.

CRR No. 1791 of 2014

20. Mr. Anil Malik, learned counsel appearing for petitioner Gurmeet Kaur wife of Bhupender Singh (daughter-in-law of Darshan Singh, accused) submitted that she too has been roped in only because she is the daughter-in-law of Darshan Singh and Ram Ratti, wife of Bhupender Singh.

He further submitted that though she is not similarly placed as the petitioners in the other petitions, in as much as, a specific role has been attributed to her in the FIR as also in the deposition of the complainant as PW1 before the trial Court, however, the fact that she has a child who was about one year old at that time, is sufficient to show that she could not have been present either with the child at the spot, or would have even left the child behind to be present at the spot armed with a 'gandasa', to take part in a dispute which was concerning only her in-laws and her husband. He reiterated that though Darshan Singh himself had named his own wife and

son as co-accused, he had not named his daughter-in-law, i.e. petitioner Gurmeet Kaur.

Learned counsel also relied upon the judgment in Hardeep Singh's case, to submit that the trial Court had erred even in law, as it was required to record more than simply a prima facie satisfaction in respect of her complicity in the crime. As such, he too contended that her summoning is legally unsound, other than the fact that it is bad on merits.

CRR No. 3001 of 2014

21. Mr. Ramesh Chahal, learned counsel for the petitioner in this case, while reiterating the arguments made by all other learned counsel, submitted that Parminder, petitioner, had also been not found to be involved in the crime by the investigating agency and as such had not been named as an accused in the report submitted under Section 173 Cr. P.C.. He further reiterated that even as per the statement of one of the main accused, i.e. Darshan Singh, Parminder was only involved in an earlier attack on the complainant and was not present when the occurrence in question took place on 28.01.2013.

He, therefore, submitted that the trial Court had committed a grave error in summoning Parminder, in the present case.

22. As opposed to submissions made by all learned counsel for the petitioners, aforesaid, Mr. B.S.Sewak and Mr. Rajinder Kumar Mathur, counsel for complainant Ram Niwas, submitted that the backdrop of the dispute is that Darshan Singh-accused and Ram Niwas-complainant bought two plots and though Darshan Singh had sold his plot, he wanted to grab Ram Niwas's plot also.

The petitioners, other than Gurmeet Kaur, are not directly related to Darshan Singh; however, they had joined hands with him, as is obvious even from the report of the S.P. Hissar, which is contrary to what was submitted by the learned counsel for the petitioners, in as much as, it is specifically stated in the said report that the case registered against the complainant's wife seems to be a fabricated and concocted story to implicate Ram Niwas and his wife “ on the submission of Pardeep Mor, Darshan Singh and ASI Wazir Singh”.

Thus, Mr. Mathur submitted, that it is obvious even as per the report of a senior police officer, that Darshan Singh was in connivance with all the other accused, to falsely implicate Ram Niwas one way or the other and to harass his family, as he was interested in evicting him from the plot that was the source of the dispute.

Mr. Sewak submitted that the reason why Chandi Ram and Hoshiar Singh (petitioners in CRM No.534 of 2014), were inimical to towards the complainant was because of the fact that the complainant had lodged an FIR No.150 dated 04.09.2002 against them for an offence punishable under Section 325 IPC and both these petitioners were convicted by the trial Court on 06.12.2010. Similarly, since Pardeep Mor (petitioner in CRM No.1342 of 2014), had lodged an FIR No.215 dated 15.08.2012, in which the complainants' wife was victimized (as already submitted by the counsel for the petitioners), the arguments of the counsel for the petitioners, as per Mr. Sewak, is double edged, inasmuch as, the enmity between both the parties is obviously well established, thereby giving motive to all those who were having some grudge against the complainant, to align together and attack him and his family.

23. Mr. Sewak further pointed to the inquiry report of the Superintendent of Police, Hisar, annexed by the complainant with his application (CRM No.2800 of 2014 in CRR No.534 of 2014) to submit that the Superintendent of Police had specifically indicted the Investigating Officer in FIR No.215 dated 17.08.2012, registered against the complainants' wife and therefore, that is the reason why the petitioners, in all these cases, had been not named in the report submitted under Section 173 Cr. P.C. He submitted that the Superintendent of Police has also specifically concluded in his inquiry report that the police had not acted properly even when FIR No.9 dated 15.01.2013 was got registered by the complainant, and even earlier when he had submitted a complaint dated 31.10.2012

Hence, Mr. Sewak submitted, that it was very obvious that the local police of Narwana, District Jind, was not favourably disposed towards the complainant, especially after the Superintendent of Polices' report against them, and in any case even before that; thereby resulting in all the present petitioners being not named as accused in the report submitted to the trial Court, in the present case, under Section 173 Cr. P.C. Hence, the petitioner had no choice but to move an application under Section 319 Cr. P.C. seeking that they be summoned as accused.

24. Mr. Sewak and Mr. Mathur further said, with regard to Pardeep Mors' involvement in the case registered against the complainants' wife, that he (Pardeep Mor) first filed an affidavit before the police in favour of Darshan Singh, to the effect that he was a good man etc. and he was falsely implicated in a case but thereafter, Pardeep Mor deposed in court that he knew nothing of the dispute between Darshan Singh and the complainant.

25. Learned counsel for the complainant further submitted that as regards Gurmeet Kaur, daughter-in-law of Darshan Singh, she was actually present at the spot and was strangely declared innocent by the investigating agency, despite the fact that her father and his younger brother had given two contradictory affidavits, one stating that she was taken to her parental home before the occurrence, and the other saying that she was taken away thereafter. As such, learned counsel contended that there was a deliberate attempt to shield her, because she was actually present at the spot.

26. Learned counsel then submitted that the delay in lodging the FIR was actually a result of the police siding with the accused and, as a matter of fact, the FIR was registered at 10.30 P.M. on 28.01.2013 only on the intervention of higher police officers. They further submitted that in view of the fact that all the petitioners, along with their co-accused, were named at the initial stage itself in the FIR, shows that they were all present at the spot at the time of the occurrence.

Learned counsel for the complainant, lastly, submitted that the complainant had stood by his complaint in toto, while appearing as a prosecution witness before the trial Court and as such, keeping in view all the above facts, the trial Court has rightly summoned them as accused and eventually charged them also, for the offences made out in the charge-sheet.

27. On the law laid down by the Supreme Court, in *Hardeep Singhs' case* (supra) (2014) 3 SCC 92, learned counsel on both sides relied upon different parts of the judgment, in support of their opposing stands.

Learned counsel on both sides also relied on some other judgments which need not be referred to, in view of the subsequent judgment of the Constitution Bench in *Hardeep Singhs' case* (supra), which

lays down the parameters which are to be seen by the trial Court, before and while summoning any person sought to be so summoned, on an application moved under Section 319 Cr. P.C.

28. The Constitution Bench framed the following questions for its consideration:-

- “6.1.(i) What is the stage at which power under section 319 Cr.P.C. can be exercised?
- 6.2.(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?
- 6.3.(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?
- 6.4.(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?
- 6.5.(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 charged or who have been discharged?”

Though obviously, all the questions above and the answers given by their Lordships, to the same, would be required to be looked at by a trial Court, before issuing summons for an application moved under

Section 319 Cr. P.C., question nos. (ii) to (v) are specifically to be looked at in the context of the present case. The answers to the above questions were given by their Lordships in paragraphs 38, 55 to 57, 85, 92, 106 and 116 of the judgment (SCC citation) and were summed up in paragraph 117 thereof.

29. In the present case, the trial Court, as already noticed, relying upon different judgments, came to the conclusion, vide the impugned order, that it was only required to record a prima-facie satisfaction that the petitioners had committed the offence for which they were sought to be charged with and, accordingly, summoned them. However, as can be seen from the answer given by their Lordships to question no.(iv) above, the trial Court is required to, on an application moved under Section 319 Cr. P.C., to satisfy itself, on more than just a prima-facie level, with regard to the likelihood of conviction of a person, before summoning him. Thus, as regards the nature/degree of satisfaction required, in the mind of the trial Court, before summoning a person under Section 319 Cr. P.C., it was held as under:-

“106. 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 guilt of the accused.”

The above conclusion was arrived at by the Supreme Court on giving the following reasons:-

“105. Power under Section 319 Cr. P.C. is a discretionary and an extraordinary 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.”

Thereafter, it was concluded as follows:-

“117.5. 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.”

(Emphasis applied by this Court)

30. The question that then arises is as to what is the nature of strong and cogent evidence that is to be looked at by the trial Court. That was answered by their Lordships in reply to question nos. (ii) and (iii) reproduced hereinabove. The answers to the said questions, i.e. whether the word 'evidence' used in Section 319(1) Cr. P.C. could only mean evidence tested by cross-examination, or simply even on the basis of a statement made in the examination-in-chief of the witness concerned; and whether the word 'evidence' has been used in a comprehensive sense and includes the evidence collected during investigation, or is limited to the evidence recorded during trial, were questions answered as follows..

Answering the first part, it was held that:-

“92. Thus, in view of the above, we hold that power under Section 319 CrPC can be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.”

As to when a trial can be stated to have commenced, it was held that a trial commences only on charges being framed. A view taken to the contrary, in earlier decisions, to the effect that the trial commences on cognizance being taken, was specifically not approved by the Constitution Bench (reference para 38, SCC citation).

As regards the second part, as to whether the word evidence has been used in a comprehensive sense in Section 319(1) Cr.P.C. or

whether it is limited to the evidence recorded during trial, it was held while discussing the issues, as follows:-

“84. The word “evidence” therefore, has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 Cr. P.C. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial.”

Elaborating further on the above, it was held that:-

“85. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 Cr. P.C. The “evidence” is thus, limited to the evidence recorded during trial.”

Therefore, though material that has been received by the Court after cognizance is taken and before trial commences, including material used at the stage of the inquiry (reference para 84), such material which is brought before the Court, before trial commences, can be used only for corroboration and to support the evidence recorded by the Court to invoke its jurisdiction under Section 319 Cr. P.C. In other words, evidence itself is that which is recorded during the trial, but corroboration can be taken from material produced before the Court before the trial commences. Thus, finally, it was held that:-

“117.3. 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.”

31. As regards question (v) posed by the Apex Court, with regard to whether power under Section 319 Cr. P.C. extends to a person not named in the FIR or those named but not charged or even those who have been discharged, it was held as follows:-

“116. Thus, it is evident that power under Section 319 Cr. P.C. can be exercised against a person not subjected to investigation, or a person placed in Column 2 of the charge-sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 Cr. P.C. without taking recourse to provisions of Section 300(5) read with Section 398 Cr. P.C.”

32. Thus, looking at the parameters as have been set down by the Constitution Bench of the Supreme Court, the question now before this Court is, after having heard learned counsel on both sides, as to whether this Court should come to its own conclusion as to whether all the petitioners in these four revision petitions, or any of them, have/has been correctly summoned or not, vide the impugned order, or whether the matter should be remitted to the trial Court itself, to adjudicate afresh on the application under Section 319 Cr. P.C., strictly as per the parameters laid down in *Hardeep Singhs' case* (supra).

Though obviously, after considering the arguments on both sides, this Court has, at least, prima-facie formed some opinion on the question; however, as to what material is before the trial Court, in support of

the evidence placed/led before it, in terms of the parameters set down by the Apex Court, is something which the trial Court itself would be required to look into and then, on the basis of that, record whether or not it is satisfied to the degree required, again as per the parameters laid down by the Constitution Bench, that the petitioners, or any of them, should be summoned before it.

In fact, in my opinion, it would be improper for this Court to substitute its own opinion, without looking at the entire evidence before the trial Court and the material available before it, to support such evidence, to adjudicate upon the correctness of the summons issued to each individual petitioner in all these petitions.

Though, in fact, in view of the fact that the matter is being remitted to the trial Court, such detailed arguments need not have been reproduced in the judgment, however, since the matter was addressed at length on various dates by all learned counsel, it would have been unfair not to reproduce the arguments made.

33. Therefore, in view of the above, the impugned order of the trial Court, summoning all the petitioners in these petitions, is set aside. As the order dated 29.01.2014, summoning the petitioners, has been quashed, for the reasons given hereinabove, the subsequent order of the trial Court dated 23.05.2014, by which all the petitioners, alongwith their co-accused, were charged for the alleged commission of various offences punishable under Section 148 IPC and Sections 449, 324, 326, 307 and 302, all read with Section 149 of the IPC, as also for the alleged commission for an offence under Section 3 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, is also set aside, and the matter remitted, to the trial

Court. The trial Court shall adjudicate afresh upon the application moved by the complainant, under Section 319 Cr. P.C., after conforming to the parameters laid down in *Hardeep Singhs' case*, with regard to the evidence and material before that Court (trial Court) and thereafter, shall record its satisfaction, or otherwise, again as per what has been held by the Constitution Bench, with regard to the probable culpability or non-culpability of each individual petitioner in these petitions, in the commission of the offences with which the original accused have been charged.

It is made clear that nothing stated hereinabove, in regard to the submissions made by all learned counsel, for or against the petitioners in these petitions, shall be taken to be any opinion by this Court, on the merits of the arguments made by either side. It is also clarified that none of the arguments made by either side before this Court, shall be taken into consideration by the trial Court while now adjudicating on the matter and it shall be decided only on the basis of evidence and material brought before the trial Court, in terms of the guidelines laid in *Hardeep Singhs' case*.

13.05.2015
amit rana/dinesh

(Amol Rattan Singh)
Judge