

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

**Crl. Revision No. 486 of 2015**  
**Date of decision : April 28, 2015**

**Nisha**

**..... Petitioner**

**Versus**

**State of Haryana and others**

**...Respondents**

**CORAM:- HON'BLE MS. JUSTICE ANITA CHAUDHRY**

1. Whether Reporters of the 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 ?

**Present:** Mr. B.S. Dhillon, Advocate  
for the petitioner

Mr. Deepak K. Grewal, DAG Haryana

Mr. Rishu Pal Rana, Advocate  
for respondents No. 2 and 3

**ANITA CHAUDHRY, J.(ORAL)**

This revision is directed against the order dated 12.11.2014 passed by the Additional Sessions Judge, Kurukshetra who dismissed the application filed by the petitioner/complainant who was seeking summoning of the additional accused in FIR No. 111 dated 22.06.2014 registered under Section 376/120-B IPC.

The petitioner had levelled allegation of rape against her brother-in-law(Jeth). She had alleged that it was her husband who had connived and was under the influence of liquor at that time. The father-in-law and mother-in-law were present in the house. The complainant came out of the room and complained to the in-laws but they put her away. The complainant ran out of the house and called the police. She also called her parents. The complainant returned

with her parents to her parental house.

The incident occurred on 18.06.2014. The matter was reported to the police on 22.06.2014. The police investigated the case and filed the challan against husband and the brother-in-law. An application was moved by the complainant under Section 319 Cr.P.C. for summoning the mother-in-law and father-in-law, as additional accused. That application was dismissed by the Additional Sessions Judge (Exclusive Court set up for Heinous Crime Against Women) Kurukshetra.

Aggrieved by the order this revision has been preferred.

Learned counsel for the petitioner submits that the mother-in-law and father-in-law were named by the complainant in the complaint made to the police and also in the statement recorded under Section 164 Cr.P.C. and also in the Court when she appeared as a prosecution witness but the Court had rejected the application. It was urged that there was strong and cogent evidence led by the victim and the in-laws were party to the crime committed by their elder son and a conspiracy hatched by the son. Reliance was placed upon ***Prem Kaur vs. State of Punjab and others, 2013 (3) RCR (Criminal) 76*** and ***Arshida vs. State of Haryana and others, 2014(1) RCR(Criminal) 946***.

The submission on the other hand was that there was delay in lodging the FIR and when the police had been called to the spot after the occurrence, there was no reason why the statement could not be given by the victim. It was urged that the FIR had been lodged four days later after due deliberations. Learned counsel

refers to the statement made under Section 164 Cr.P.C and urges that in the statement made before the Chief Judicial Magistrate the allegations were that after the incident, the complainant came out of the room and talked to her in-laws who replied that the matter related to the family and she had confided in her in-laws and till that time there was no allegation that alleged incident had occurred on account of any conspiracy hatched by them. The submission was that the parents could not be a party to rape by their son.

The question to be answered is whether the evidence led by the prosecution was sufficient to exercise the power under Section 319 Cr.P.C.

A three Judge Bench of the Supreme Court in ***Hardeep Singh vs. State of Punjab and others, 2014(1) RCR(Criminal) 623*** had formulated the following questions :-

- (i) What is the stage at which power under Section 319 Cr.P.C. can be exercised?*
- (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?*
- (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?*
- (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 convicted?*

*(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?*

Section 319 Cr.P.C. as it exists today, is quoted hereunder:

***“319 Cr.P.C. - 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 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.”*

The provisions under Section 319 Cr.P.C. can be invoked where the investigating agency for any reason does not array one of the real culprits as an accused. The Court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the Court exercised the power as contemplated under Section 319 Cr.P.C.?

Section 319 Cr.P.C. allows the Court to proceed against a person who is not an accused in the case before it. He can either be a person named in column 2 of the charge sheet filed under Section 173 Cr.P.C. or a person whose name has been disclosed in any material before the Court that is to be considered for the purpose of trying the offence, but not investigated.

The Hon'ble Supreme Court in ***Hardeep Singh's case (supra)***, answered question (iii) in para 99 of the judgment which reads as under:-

**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 chargesheet.

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.

With respect to question No. (iv) it was answered -

**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.

With respect of question No. (v) it was answered-

**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 chargesheeted 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 chargesheeted 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 prosecutrix had made a statement under Section 164 Cr.P.C. (Annexure P-4) after 5 days of occurrence which reads as under:-

*“Stated that four months ago my marriage was solemnized. It is the incident of three four days back that at about 10/10 ½ p.m. my brother-in-law Mohit @ Monu came in my bed room and forcibly committed rape upon me. I told this incident to my father-in-law and mother-in-law who said that it is a family matter. My husband was under the influence of liquor. After opening lock I rang up on 1091. A legal action may kindly be taken against all the accused. It got recorded my statement in full sense. I do not want to go there.*

The question for consideration is whether the evidence led by the prosecution was sufficient to summon the additional accused. The police had given a clean chit to the in-laws. The Additional Sessions Judge had examined the evidence led before it and found that the evidence was not satisfactory for exercising the power under Section 319 Cr.P.C. While summoning an additional accused there has to be much stronger evidence than evidence which merely raises probability of their complicity. The test that has to be applied is one which is more than a *prima facie* case which if goes unrebutted would lead to conviction. In the absence of such circumstances, the power can not be exercised. I find no infirmity in the order passed by the Court below.

The petition is dismissed.

**April 28, 2015**

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**(ANITA CHAUDHRY)  
JUDGE**