

Criminal Revision No.856 of 2015

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

Criminal Revision No.856 of 2015

Date of decision: 11.05.2015

Jai Parkash

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 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. Sanjay Vashisth, Advocate, for the petitioner.
Mr. Rajesh Gaur, Addl. A.G., Haryana.
Mr. R.S. Rai, Sr. Advocate, with
Mr. Anurag Arora, Advocate, for respondents No.2 to 4.

PARAMJEET SINGH, J. (ORAL)

Instant criminal revision petition has been filed for setting aside the order dated 22.12.2014 passed by learned Additional Sessions Judge, Faridabad, whereby application under Section 319 read with Section 190 of the Code of Criminal Procedure moved by the petitioner for summoning the additional accused to face trial, has been dismissed.

It is not necessary to set out the facts in detail. Suffice it to say that petitioner got lodged FIR No.89 dated 21.07.2012 under Sections 148/149/323/324/506/307 IPC at Police Station Chhainsa, District Faridabad against Bhagwat Dayal, Ram Kumar Sarpanch, Kishna, Govind Ram @ Dandu, Dhanni, Jaggi, Bharat and others. After investigation at the first instance, police challaned only Ram Kumar Sarpanch and submitted its first report under Section 173 Cr.P.C.

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Subsequently, supplementary challan was submitted under Sections 323, 324, 326, 307, 506, 216/34 IPC against Kishan, Bharat, Jagdish @ Jaggi and Rati Ram whereas Bhagwat Dayal and Dhani Ram were held to be innocent and no details were given about Govind Ram. Petitioner moved an application under Section 319 read with Section 190 Cr.P.C. for summoning respondents No.2 to 4 before the learned Additional Sessions Judge, which has been dismissed vide impugned order. Hence, this revision petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner contended that petitioner/complainant specifically named the accused in the FIR but the police failed to challan all the persons. Learned Additional Sessions Judge has erred in law in dismissing the application despite the fact that involvement of all the proposed accused is clear beyond doubt in the scuffle. Trial Court appears to be impressed with the statements of the hostile witnesses. The impugned order is liable to be set aside.

Learned counsel for respondents No.2 to 4 vehemently opposed the contentions raised by learned counsel for the petitioner. It is contended that solitary statement of Jai Parkash cannot be believed. Petitioner has failed to prove prima facie case against respondents No.2 to 4. They have been found innocent even during the submission of supplementary challan. No specific role has been attributed to respondents No.2 to 4. The application has rightly been rejected by the trial Court. Hence, this revision petition is liable to be dismissed.

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I have considered the contentions raised by learned counsel for the parties.

It has been held by the Hon'ble Apex Court in ***Suman Vs. State of Rajasthan and another***, (2010) 1 Supreme Court Cases 250 as under:-

“A reading of the plain language of Section 319(1) Cr.P.C. makes it clear that a person not already an accused in a case can be proceeded against if in the course of any inquiry into or trial of an offence it appears from the evidence that such person has also committed any offence and deserves to be tried with other accused. There is nothing in the language of Section 319(1) Cr.P.C. from which it can be inferred that a person who is named in the FIR or complaint but against whom charge sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence the court finds that such person has committed any offence for which he could be tried together with the other accused.

The process issued against the appellant under Section 319 Cr.P.C. cannot be quashed only on the ground that even though she was named in the complaint, the police did not file charge-sheet against her. A person who is named in the FIR or complaint with the allegation that he/she has committed any particular crime or offence, but against whom the police does not launch prosecution or files charge-sheet or drops the case, can be proceeded against under Section 319 CrPC if from the evidence collected/produced in the course of any inquiry into or trial of an offence, the court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused.

The Magistrate had objectively considered the entire matter and judiciously exercised discretion under Section 319

Cr.P.C. for taking cognizance against the appellant. The issue of summons against the appellant was not an abuse of the process of the court.”

In **Hardeep Singh vs. State of Punjab and others** 2014 (1) RCR (Criminal) 623 while dealing with power of Court to summon a person as additional accused, a five-Judge Bench of the Hon'ble Apex Court has held as under:

“110. We accordingly sum up our conclusions as follows:

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 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.

Question No. II

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.

Question No. IV

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 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 matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove.”

Section 319 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 subsection (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.”

During investigation, Bhagwat Dayal @ Kallu and Dhani Ram, respondents No.3 and 4, respectively, were found innocent and the application moved by the petitioner under Section 319 Cr.P.C. has been dismissed on the ground that Bhagwat Dayal and Govind Ram were empty handed and no role has been attributed to them. However, with regard to respondent No.4 – Dhani Ram nothing has been discussed in the order. Specific injury has been attributed to Dhani Ram, that he had inflicted sword blow on the head of the complainant – Jai Parkash.

In view of above discussion, impugned order dated 22.12.2014 is set aside qua respondent No.4-Dhani Ram and he is ordered to be summoned and to stand trial, along with accused challaned by the police. Petition qua respondent Nos.2 and 3 is dismissed.

Disposed of in the aforementioned terms.

(Paramjeet Singh)
Judge

May 11, 2015

R.S.