

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.2756 of 2014 (O&M)

Date of decision: September 19, 2016.

Parmod Kumar

... **Petitioner**

v.

State of Haryana and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Mrs. Rupinder Kaur Thind, Advocate for the petitioner.

Ms. Tanushree Gupta, Deputy Advocate General, Haryana.

Shri Jaswinder Singh, Advocate for respondent No.2.

A.B. Chaudhari, J. (Oral):

Rule. Heard forthwith.

In a pending Sessions Case No.78 of 2013 before the Additional Sessions Judge, Sirsa, an application under Section 319 Cr.P.C for summoning additional five accused was moved. That application was rejected in entirety by order dated 8.8.2014 by the trial Judge. The trial proceeded and now it is not in dispute that trial has been completed in the sense that the same is now fixed for arguments. On 31.8.2016, this Court had made the following order:-

“This is application for preponing of the main case which is fixed for 19.10.2016.

This is petition against order dated 08.08.2014 declining to summon the accused under Section 319 Cr.P.C. filed on 25.08.2014.

Learned Counsel for the petitioner states that she had sought stay of the trial but the same was not granted. Thereafter, the petition remained pending and last order was passed on 18.01.2016. Now Learned Counsel for the petitioner states that the trial is completed and the case is fixed for final arguments. It is necessary to decide the question whether the High Court should interfere with the order under Section 319 Cr.P.C. when the trial has been completed and the Sessions trial is fixed for arguments.

Learned Counsel for the petitioner to inform the counsel for contesting respondent No.2 about this order.

Post for final disposal of CRR on 02.09.2016.

The application stands allowed accordingly.”

Thereafter, on 2.9.2016, this Court stayed passing of judgment by the trial court in view of the prima facie satisfaction about the merits in the matter.

This petition to challenge the impugned order dated 8.8.2014 rejecting the application under Section 319 Cr.P.C. was instituted in this Court on 25.8.2014 and on 4.9.2014, this Court had issued notice of motion and since then the matter remained pending. This Court had dismissed the revision petition qua four proposed persons and had issued notice only qua Tulsi Ram respondent No.2, that is why qua Tulsi Ram, the present petition is required to be disposed of finally since this Court had issued stay order from passing the final judgment.

In support of the revision petition, Learned Counsel for the petitioner submitted that in the FIR as well as the deposition of Parmod Kumar son of Kirpal Singh PW1, there is a specific deposition that Tulsi Ram had caused a gandasi blow to his father. She submitted that the trial Judge has given reasons which are clearly illegal for rejecting the prayer for summoning the accused under Section 319 Cr.P.C., at least qua Tulsi Ram.

According to her, the evidence before the Court of Parmod Kumar PW1 was good enough to prima facie hold that the conviction could be possible. To a pointed query by this Court as to the completion of trial, as to whether this Court could exercise the revisional jurisdiction, particularly when the trial has been completed, she cited the decisions in the case of Shashkant Singh v/s Tarkeshwar Singh, 2002(3) RCR (Crl.) 191 and Babubhai Bhimabhai Bokhiria and another v/s State of Gujarat and others, 2014(1) RCR (Crl.) 542 and in particular paragraph 8 and 10 of Shashikant's case and para 12 of Bhimabhai's case. She further contended that the impugned order made by the trial Judge is required to be set aside.

Per contra, learned counsel for the proposed accused Tulsi Ram opposed the petition and invited my attention to the impugned order of the trial court and in particular para 5 and argued that in terms of provisions of Section 193 Cr.P.C., same plea was raised by the petitioner before the Sessions Court, namely, to summon the additional accused including Tulsi Ram but that was rejected. According to him, therefore, the view taken by the Court at that time could not be overturned by taking recourse to Section 319 Cr.P.C. According to him, that would amount to overriding the order made under Section 193 Cr.P.C. He therefore contended that in terms of the said order, the accused was already summoned and therefore, there is no occasion for this Court at such a late stage that after completion of trial, to summon any accused and therefore according to him, the said decisions are clearly distinguishable on facts. He then contended that it is only one witness who has taken the name of Tulsi Ram so describing the evidence

whereas other witnesses have supported the said version. According to him, therefore, even on facts, there is no reason to interfere with the impugned order.

Upon hearing, learned counsel for the rival parties and upon careful perusal of the record, I find that in the FIR it was stated that Tulsi Ram gave “gandasi blow from the reverse side on the head of his father” and in the deposition before the court, Parmod Kumar PW1 stated that after that “Tulsi Ram caused a gandasi blow on the head of my father”. Section 319 Cr.P.C. reads thus:-

“Section 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.”

It is clear from the above that it appears from the evidence that any person not being the accused has committed any offence, the court may proceed to issue summons to such an accused. The Constitution Bench of the Apex Court in the case of Hardeep Singh v/s State of Punjab and others, 2014(1) RCR (Crl.) 623 has interpreted this provision and the following occlusions were drawn in para 110:-

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

Question Nos.I & III

Q.I 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.

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.”

I have seen the reasons recorded by the trial Judge in so far as the proposed accused Tulsi Ram is concerned. The reason given in para 7 by the learned trial court is that except the oral statement of Parmod Kumar PW1, there is no other evidence available on record. It is not possible to reconcile with the statement of reasons. If Parmod Kumar PW1 was the informant and an eye witness to the incident and law does not require that the evidence of one witness cannot be believed or that the same should always be supported by any other evidence, if the same is free from doubt and trustworthy. By then, at this stage when the court would make the assessment to say that there was no evidence to summon Tulsi Ram to be preposterous to him, particularly at the stage of Section 319 Cr.P.C. The evidence before the court as well as in the statement in FIR is crystal clear about prima facie case against Tulsi Ram and in the light of the decision in the case of Hardip Singh, the trial court went completely wrong in rejecting the application qua Tulsi Ram.

The next question as raised by learned counsel for the accused is about the delay and the completion of trial which, according to him, would come in the way of the petitioner to reopen the trial. The judgments cited by Learned Counsel for the petitioner which I have carefully seen, clearly take care of the situation and rather the issue is no more *res integra*.

The Apex court in both the cases have categorically held that the completion of a trial cannot be an obstruction for exercise of power under Section 319 Cr.P.C. The matter remained pending in this Court though the petitioner had approached this Court within 21 days from the passing of the impugned order and therefore, the petitioner could not be blamed. The matter remained pending and there was no stay granted in favour of the petitioner and therefore the petitioner cannot be thrown out on that ground looking to the principle of *Actus Curie Neminum Gravabit*.

In that view of the matter, I have come to the conclusion that the impugned order must be set aside only qua Tulsi Ram. In the result, the following order is passed:-

ORDER

- (i) CRR-2756-2014 is partly allowed;
- (ii) the impugned order qua only Tulsi Ram is set aside;
- (iii) the application under Section 319 Cr.P.C. is allowed qua Tulsi Ram;
- (iv) the trial court shall follow the mandate of sub-section (4) of Section 319 Cr.P.C. pursuant to the present order. The trial shall then be completed expeditiously;
- (v) no order as to costs.

[**A.B. Chaudhari**]
Judge

September 19, 2016.
kadyan

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No