

226-A

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

CRR No.3174 of 2014 (O&M)

Date of decision: September 22, 2016

Charanjit Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

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

Present: Mr. Vishal Munjal, Advocate for the petitioner.

Mr. Shilesh Gupta, Addl. AG Punjab.

Mr. Vipin Mahajan, Advocate
for respondents No.2 to 4.

A.B. CHAUDHARI, J (Oral)

Rule. Returnable forthwith heard learned counsel for the rival parties.

What is impugned in the present revision petition is the order dated 07.06.2014 by which the application under Section 319 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') filed by the petitioner was rejected in the entirety for summoning three persons as the accused for facing the trial.

Learned counsel for the petitioner vehemently argued that the names of the three persons by name Charan Singh, Dilbagh Singh and Surjit Kaur did appear in the FIR as well as the deposition of Charanjit Kaur-PW1 before the Court and specific role was attributed to them. According to him, the Court below was not right in refusing to exercise its power under Section 319 Cr. P.C. against the three persons.

Per contra, learned counsel for the proposed accused persons

submitted that there was no evidence as such justifying issuance of summons to three persons except for the FIR and what was relevant was the deposition before the Court for the said purpose. He also opposed the present petition arguing that by this time, trial has almost been completed and therefore, it is now too late in the day to consider such prayer for summoning the accused in exercise of power under Section 319 Cr. P.C. At any rate, according to him, no specific role is attributed to these three persons even by Charanjit Kaur-PW1 and therefore, there is no occasion for summoning anyone of them. He therefore, prayed for dismissal of the petition.

Having heard learned counsel for the rival parties and with their able assistance, I have perused the FIR as well as gone through the deposition of Charanjit Kaur-PW1 carefully. A perusal of the deposition, to my mind, shows specific attribution to one accused namely Charan Singh who could be summoned under Section 319 Cr. P.C. The deposition is that Sukhwinder Singh and Charan Singh were armed with swords and attacked on her husband. Sukhwinder Singh is already an accused. The evidence of Charanjit Kaur-PW1, thus, in so far as Charan Singh only is concerned, is clear and unambiguous and therefore, there is not only prima-facie evidence against him for summoning as an accused to face the trial but he is required to be summoned in accordance with the ratio of the decision rendered by the Constitution Bench of the Apex Court in the case of **Hardeep Singh versus State of Punjab and others, 2014 (1) R.C.R. (Criminal) 623.**

However, in so far as Dilbagh Singh and Surjit Kaur are concerned, the deposition of Charanjit Kaur-PW1 does not even show any

act much less or attack on their part in order to enable the Court to make any order against them under Section 319 Cr. P.C. I, therefore, think that the trial Court was right in rejecting the application in so far as Dilbagh Singh and Surjit Kaur are concerned. As earlier stated, the trial Court went wrong in rejecting the application against Charan Singh. The submission that because the trial has almost been completed the application should not have been entertained, does not appeal to me since the *de novo* trial in the light of sub Section-4 of Section 319 Cr. P.C. is required to be held. The question whether the completion of trial would take away the power under Section 319 Cr. P.C., has been answered by the Supreme Court in the case of **Babubhai Bhimabhai Bokharia and another versus State of Gujarat and others, 2014 (1) SCC (Cri) 229**. Thus, the question raised by learned counsel for the respondents is no more *res integra*.

In the result, I make the following order:

- (i) CRR No.3174 of 2014 is partly allowed,
- (ii) Impugned order dated 07.06.2014 is modified and the same is set aside qua Charan Singh who shall be issued summons under Section 319 Cr. P.C., while the impugned order, in so far as Dilbagh Singh and Surjit Kaur are concerned, is affirmed,
- (iii) The trial Court would now follow the procedure contemporary to sub Section 4 of Section 319 Cr. P.C.

(A.B. CHAUDHARI)
JUDGE

September 22, 2016

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No