

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

CRR-3073 of 2016 (O&M)

Date of decision: 18.10.2016

Duli Chand

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. D.S. Matya, Advocate
for the petitioner.

Jitendra Chauhan, J. (Oral)

This revision has been filed against the impugned order dated 27.05.2015 passed by Additional Sessions Judge, Palwal, whereby the application filed by the petitioner under Section 319 Cr.P.C. for summoning respondents Nos. 2 to 6 in FIR No.212 dated 19.08.2011, registered under Section 148, 323, 325, 302, 506 read with Section 149 IPC at Police Station Chandhut was dismissed.

It is contended that the learned Additional Sessions Judge, Palwal, has misread the legal position with regard to the exercise of powers under section 319 of the Code of Criminal Procedure (for short 'Code') while passing the impugned order dated 27.05.2015. He further argued that after investigation, the police

submitted a final report under Section 173 of the Code only against 09 persons while exonerating the respondents Nos. 2 to 6, despite the fact that the petitioner has specifically named the persons sought to be summoned as additional accused. He refers to the testimony of the petitioner/complainant whereby he had specifically named and stated the role of respondent Nos. 2 to 6.

Heard.

Section 319 of the Code reads as under:-

“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 a settled principle of law that in the exercise of its jurisdiction under section 319 of the Code, the Court is under a bounden duty to examine whether the evidence on record is sufficient to form a subjective opinion regarding the conviction of the persons so sought to be summoned to face trial. In **Hardeep Singh** Vs. **State of Punjab**, rendered in 2014(3) SCC 92, it was held as under:-

“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 unrebutted, 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.”

In the present case, the occurrence took place on

10.08.2011. The injured was discharged from the hospital on 03.09.2011. He died on 12.05.2013. As per MLR of the injured/deceased, only four injuries were alleged to have been inflicted by the accused out of which two were a cause of constant pain. Nine accused have already been facing the trial. Only two injuries were noticed on the person of the deceased. Therefore, in the circumstances, it appears improbable that 14 persons intending to cause hurt would inflict only two injuries. The persons sought to be summoned i.e. respondent Nos. 2 to 6 are females. Moreover, there exists failure on the part of the petitioner to explain the delay of 368 days in filing the present revision petition.

In the light of the above facts and circumstances, this Court finds no infirmity or illegality in the impugned order dated 27.05.2015. The present revision petition is therefore dismissed on merit as well as on account of delay.

18.10.2016
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No