

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

**CRM No. M-30161 of 2013 (O&M)
Date of Decision: 15.02.2017**

Kewal Krishan Puri and others

... Petitioners

Versus

State of Haryana and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. R.S.Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate,
for the petitioners.

Mr. Satish Saini, DAG, Haryana.

Mr. P.K.Garg, Advocate,
for respondent No.2.

TEJINDER SINGH DHINDSA, J.

The instant petition filed under Section 482 Cr.P.C. is directed against the order dated 06.07.2012 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Ambala Cantt whereby an application moved by the prosecution under Section 319 Cr.P.C. has been allowed and the petitioners have been summoned to face trial as additional accused for offences under Sections 380, 506, 452 and 34 IPC pertaining to FIR No.82 dated 24.04.2006, registered at Police Station Mahesh Nagar, Ambala Cantt. Petitioners also assail the order dated 07.06.2013 (Annexure P-2) passed by the learned Sessions Judge, Ambala dismissing the revision that they had filed against the summoning order.

Briefly noticed complainant lodged a complaint against Sandeep Puri, Kewal Krishan Puri, Vikas Puri, Smt. Vertangi Devi, Mukesh Dhawan, Babloo and Manni regarding commission of alleged offences

punishable under Sections 380, 504, 506, 452, 120-B read with Section 34 IPC on account of an alleged occurrence that took place on 16.03.2006 at about 5:00 p.m. Complainant asserted to be the owner of House No.15, Mool Chand Colony, Mahesh Nagar, Ambala Cantt and wherein Sandeep Puri was a tenant on the ground floor. Two rent deeds of different portions of the ground floor are stated to have been executed. Apparently, there is a dispute between the landlord and tenant and a number of proceedings are stated to have been initiated in this regard. Accusation was that Sandeep Puri intentionally was blocking a common passage leading to the stairs to the first floor of the premises in question and which were being used by the complainant as also other tenants. Complainant stated that on the date of occurrence, a telephone call was received as regards certain alterations being made on the first floor of the house. Complainant along with her husband and two three other persons reached the spot and found certain construction material lying in front of the house. Some masons/labourers had also been engaged. Upon climbing the first floor, she saw the locks having been broken, windows and doors were damaged. Certain alterations had already been carried out and items in the nature of bed, sofa, almirah, kitchen articles were missing. On being confronted, the accused persons abused the complainant party and even threatened to kill them. Sandeep Puri is alleged to have picked up a saria, Kewal Krishan Puri, Mukesh Dhawan and Smt. Vertangi Devi picked up brick bats, Vikas, Babloo and Manni picked up lathis and they collectively pushed the complainant party outside and threatened them to go away otherwise they would be done to death. Against such allegations, the matter is stated to have been reported at Police Station, Mahesh Nagar, but since no action was taken, the complaint

was lodged before the competent Court and which finally led to the registration of the FIR.

On completion of investigation, a challan was filed against the other accused but the present petitioners were found to be innocent and their names were kept in Column No.2. Suffice it to notice that petitioners No.1 to 3 are the father, brother and wife of main accused Sandeep Puri respectively.

After recording of statements of PW-2 Anju Aggarwal complainant and her husband PW-1 Arun Aggarwal, an application was moved under Section 319 Cr.P.C. seeking to summon the present petitioners to face trial as additional accused. This has led to the passing of the impugned order dated 06.07.2012 (Annexure P-1) by the trial Court at Annexure P-1. Revision petition preferred by the petitioners against the summoning order has been dismissed vide order dated 07.06.2013 (Annexure P-2) passed by the Sessions Judge, Ambala.

Resultantly, the present petition under Section 482 Cr.P.C.

Counsel for the parties have been heard.

Section 319 of the Code of Criminal Procedure reads as under:

“319. 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 upon which the inquiry or trial was commenced, 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 witnesses reheard;

(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 extent of power with the Court to summon persons other than the accused under Section 319 of the Code of Criminal Procedure to stand trial in a pending case has come up for consideration before the Hon'ble Supreme Court in a number of decisions. ***In Lokpal v. Nihal Singh, 2006(2) RCR (CrL) 707***, it was observed as under:

“...The court, while examining an application under Section 319 of the Code, has also to bear in mind that there is no compelling duty on the court to proceed against other persons. In a nutshell, for exercise of discretion under Section 319 of the Code all relevant factors, including those noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused.

It was furthermore observed:

“19. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the

court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken...”

In ***Lal Suraj @ Suraj Singh and another v. State of Jharkhand, 2009(1) RCR (Criminal) 504***, it had been held as follows:

“...The principle of strong suspicion may be a criterion at the stage of framing of charge as all the materials brought during investigation were required to be taken into consideration, but, for the purpose of summoning a person, who did not figure as accused, a different legal principle is required to be applied. A court framing a charge would have before it all the materials on record which were required to be proved by the prosecution. In a case where, however, the court exercises its jurisdiction under Section 319 of the Code, the power has to be exercised on the basis of the fresh evidence brought before the court. There lies a fine but clear distinction.”

In a recent judgment in ***Hardeep Singh Vs. State of Punjab and others, 2014 (1) RCR (Criminal) 623***. The Hon'ble Supreme Court of India was held as follows:-

“Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge

is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

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 un rebutted, 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."

Adverting back to the facts of the instant case, the trial Court has allowed the application filed by the prosecution under Section 319 Cr.P.C. by adopting the following reasoning:-

"A perusal of the complaint as well as FIR reflects that as complainant took the name of Kewal Puri, Vikas Puri and Smt. Vartangi Devi and mentioned that Kewal Puri, Vikas Puri and Smt. Vartangi Devi along with other co-accused openly declared that they have illegally entered and have taken the possession of the first floor and have caused damage and have illegally raised walls therein and have committed the sofa

*set, double bed, two coolers, one steel almirah, one wooden almirah and utensils from the kitchen and two attachies. Sh. Sandeep Puri took iron rod and Vikas, Babloo and Manni took lathis and Vartangi, Mukesh Dhawan and Kewal Kumar took bricks and all gave lalkara and put the complainant and other under the fear of death and threatened the complainant and others to immediately leave the house failing which will be killed. Complainant Anju Rani and her husband Arun Kumar when appeared before the Court as PW2 and PW1 respectively then also in their evidence they started that the above named accused along with other co-accused caused damage to their house and gave beatings to them and further threatened to kill them and also committed theft of their articles. The prosecution witnesses Arun Aggarwal, Rakesh Vohra, Vikas and Suresh Kumar in their statement under Section 161 Cr.P.C. also specifically stated about the role played by the said accused and also stated that they have actively participated in the crime. **Keeping in view the facts as elaborated about the involvement of Kewal Puri, Vikas Puri and Smt. Vartangi Devi in the offence appear prima facie.***

The revisional Court has also adopted a similar line of reasoning and which is couched in the following terms:-

“The evidence on record is worthy of reasonable degree of credit and is not intrinsically untrustworthy or otherwise unreliable and is not liable to be discarded completely and the evidence on record makes out prima facie case as to commission of offences punishable under Sections 380, 452 and 506 read with Section 34 of the IPC by accused Kewal Krishan Puri, Vikas Puri and Vartangi Devi for which they deserve to be tried with accused Sandeep Puri, Babloo, Manni and Mukesh Dhawan already arraigned.

An order under Section 319 Cr.P.C. of the Code of Criminal

Procedure is not to be passed only because the first informant or one of the

witnesses seeks to implicate other person(s). The power under Section 319 Cr.P.C. can be exercised only when there appears during inquiry or trial sufficient evidence indicating the involvement of such person sought to be summoned as an additional accused in the offence. A mere doubt about involvement of such person on the basis of evidence led before the Court would not be enough. Sufficient and cogent reasons are required to be assigned by the Courts so as to satisfy the ingredients of the provision. The Courts below have not even adverted to the final investigation report submitted by the Investigating Agency under Section 173 Cr.P.C. and the basis upon which the present petitioners had been found innocent so as to find a mention in Column No.2. As would be clear from the extracts of the impugned orders reproduced hereinabove the case of prima facie involvement of the petitioners herein has been applied and the application under Section 319 Cr.P.C. has been allowed. This goes against the dictum laid down by the Hon'ble Apex Court in **Hardeep Singh's case (supra)**. The impugned orders as such cannot sustain.

Accordingly, the instant petition is allowed. The impugned order dated 06.07.2012 passed by the learned Judicial Magistrate Ist Class, Ambala (Annexure P-1) and order dated 07.06.2013 passed by the Sessions Judge, Ambala (Annexure P-2) are set aside.

The case is remanded back to the trial Court to reconsider the issue in the light of parameters laid down for exercise of the powers under Section 319 of the Code of Criminal Procedure by the Hon'ble Apex Court in **Hardeep Singh's case (supra)** and as noticed hereinabove.

A fresh order be passed within a period of three months from the date of passing of this order after hearing the parties concerned.

It is clarified that the directions contained in the present order to reconsider the issue would not be construed that this Court has in any manner expressed any opinion on merits and as regards the petitioners herein to be summoned as additional accused. Such aspect is to be dealt with by the trial Court at the stage of passing the order afresh and on merits.

Petition is allowed in the aforesaid terms.

15.02.2017

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes