

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

**CRR No.1669 of 2012 (O&M)
Date of Decision: 21.02.2017**

BHUPINDER SINGH AND ORS

.....Petitioners

Vs

STATE OF PUNJAB

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Anurag Chopra, Advocate
for the petitioners.

Mr. Shilesh Gupta, Addl. A.G., Punjab.

RAJ MOHAN SINGH, J.

[1]. Petitioners seek to challenge the order dated 24.05.2012 passed by the Additional Sessions Judge, Ludhiana whereby the application under Section 319 Cr.P.C. filed by the prosecution for summoning of the petitioners was allowed.

[2]. Brief facts are that the FIR was registered on the statement of Kanwal Parkash Singh with the allegations that the complainant had two sons namely Prabhdeep Singh and Karandeep Singh. On 08.02.2010, the complainant was present in his house. At about 11.00 p.m. Gurvinder Singh sent a message to his son Prabhdeep Singh and called him to his

house. Son of the complainant told to the complainant that he would come back within ten minutes. When the son of the complainant did not return back home for quite a long time, then the complainant became worried and they proceeded to search him in their car. Near LIG flats Phase-I, a Scorpio vehicle met them which came to be stopped on seeing the vehicle of the complainant. The said vehicle was being driven by Gurvinder Singh. Before the complainant could talk anything, said Gurvinder Singh by dragging out his son from the car threw him on the road and drove away his vehicle. The son of the complainant was smeared with blood. The blood was oozing out from his head and there was a bullet spot at the backside of his head. Complainant drove his son to DMC Hospital for treatment. The cause of enmity was stated to be that Prabhdeep Singh and Damanpreet Kaur daughter of Gurvinder Singh were having friendship, to which Gurvinder Singh had objected. Due to this reason son of the complainant was called by Gurvinder Singh to his house and by inflicting such injuries his son was injured.

[3]. After registration of the case, after gap of around three and half months, a supplementary statement of the complainant was recorded. In the said statement also petitioners were not named, nor any role was ascribed. In the supplementary statement the version was recorded to the effect that on

08.02.2010 at about 11.45 p.m. when the complainant was waiting for return of his son and when he did not return, then Gurjit Singh and his wife Satinder Kaur came to the house of the complainant and told him that Gurvinder Singh had given merciless beatings to his son in their *kothi* and had also fired a shot on his head and son of the complainant was lying smeared with blood in the *kothi* of Gurvinder Singh. The complainant further recorded that he along with his wife Salwinder Kaur, relative Satwant Singh, neighbour Amandeep Singh went in a car by following Gurjit Singh and reached in the *kothi* of Gurvinder Singh. There they came to know that Gurvinder Singh along with his associates by putting Prabhdeep Singh injured in his Scorpio had taken him somewhere. The complainant also went in search of them. Then they met the Scorpio where Gurvinder Singh and others took out his son from their vehicle in injured condition, threw him on the ground and drove away the vehicle.

[4]. In the aforesaid supplementary statement which was recorded after about three and half months of the FIR, no complicity of the petitioners was shown. Challan was presented under Section 173 Cr.P.C. against Gurvinder Singh son of Sardara Singh. Charges were framed. When the case was fixed for prosecution evidence, then an application was moved by the

complainant that the supplementary statement made by him was not made part of the challan. Directions were sought against the prosecution to place the same on record.

[5]. The aforesaid alleged supplementary statement of the complainant was to the following effect:-

"Stated that since the day when my son Prabhdeep Singh was killed, there has always been fear and tension in my mind. I was looking darkness all around my life. Now I have got recovered a little bit. The detail of accused and investigation of the occurrence, regarding which I could not tell you properly, the facts are that on the day of occurrence on the calling of Damanpreet daughter of accused Gurvinder Pal Singh and in the presence of her mother Smt. Kuljit Kuae and maternal uncle Tinku and her father's friend Bhupinder Singh Sokal in connivance with each others, they have killed my son and subsequently the accused Gurvinder Singh while putting my son in injured and alive condition and was put in the diggy of his scorpio vehicle no.PB-10-BT-5225 with the help of Bhupinder Singh Sochal and Tinku by killing him and were taking away to dispose of his dead body. But when I was going to the house of accused Gurvinder Singh in search of my son then on seeing my car and after stopping his vehicle the abovesaid accused Gurvinder and abovesaid accused persons Bhupinder Singh Solan and his associate Tinku who were sitting on the rear seat of vehicle in their presence by taking out my son Prabhdeep Singh who at that time was in serious injured condition due to bullet shot in his head, and by throwing him on the road they fled away from the spot. The abovesaid accused have full hand in the

murder of my son Prabhdeep Singh under well hatched conspiracy. Hence, legal action to be initiated against him is legal and justified. Statement has been got recorded, heard and it is correct.”

Sd/- Kawal Parkash Singh”

[6]. In the aforesaid undated supplementary statement allegations were made against Damanpreet Kaur daughter of Gurvinder Pal Singh, Kuljit Kaur wife of Gurvinder Pal Singh, Ravinder Singh @ Tinku son of Gurbachan Singh and Bhupinder Singh Solan son of Joginder Singh that the son of the complainant was called by Damanpreet Kaur in the presence of her mother Kuljit Kaur, maternal uncle Ravinder Singh @ Tinku and father's friend Bhupinder Singh Solan and subsequently Gurvinder Pal Singh by putting the complainant's son in injured condition with the help of Bhupinder Singh Solan and Tinku was taking away to dispose of his dead body.

[7]. On the said application, the Additional Sessions Judge, Ludhiana passed order dated 30.07.2011 and allowed the statement to be placed on the judicial file. The Court observed that the challan was presented against the accused Gurvinder Pal Singh under Section 302 IPC and 27 of the Arms Act on 20.05.2010. The charge has already been framed against the accused. When the case was fixed for prosecution evidence, the application in question came to be filed on 20.04.2010. The

Court also observed that it was the duty of the Court to see that proper material is brought on record. The supplementary statement of the complainant was found to be undated having no signature. It was also observed that at that stage, there was no occasion to give any finding regarding the admissibility and evidentiary value of the said supplementary challan and only the production of such statement was ordered. The mentioning of the same in police zimni was not the part of the record in any manner.

[8]. Thereafter complainant appeared as PW-3 and in addition to earlier version, he deposed that two other persons were sitting in the Scorpio car. Gurvinder Pal Singh alighted from his Scorpio car and opened the dicky of the vehicle and threw the son of the complainant on the ground. Bhupinder Singh Solan and Ravinder Singh @ Tinku were alleged to be sitting on the rear side of the vehicle. Names of the petitioners were arrayed. PW-3 Kanwal Parkash Singh was cross-examined on number of occasions.

[9]. Learned counsel for the petitioners vehemently submitted that as per FIR dated 09.02.2010, there was no overt act shown *qua* the petitioners, nor they were named, even in the supplementary statement recorded on 13.05.2010. The complicity of the petitioners did not come to fore. Only addition

to the extent of role attributed to Gurjeet Singh and his wife Satinder Kaur came on record. Even on 20.04.2010, a signed statement was also filed by the complainant in which no overt act was shown by the complainant *qua* the petitioners. Challan was submitted against Gurvinder Pal Singh only. At the time of post framing charge, the undated application of the complainant was sought to be made as part of the challan in the form of statement under Section 161 Cr.P.C. The aforesaid statement was a signed statement and in any eventuality cannot be treated to be a statement under Section 161 Cr.P.C., rather would come into the ambit of Section 162 Cr.P.C. For the first time, names of the petitioners were disclosed in the aforesaid undated application.

[10]. The application was contested by the petitioners. Reference was made to the supplementary statement Ex.PJ which was stated to be false and fabricated as the same was not attested, nor recorded by any competent police officer. The said statement did not bear any date. PW-3 Kanwal Parkash Singh in his cross-examination has admitted that he never named above said persons in Ex.PG. The statement of PW-4 Devinder Kaur Bhatia was not sufficient to summon the petitioners under Section 319 Cr.P.C.

[11]. In para No.5 of the impugned order the reference was

made to the alleged supplementary statement Ex.PJ viz. the role of Gurvinder Pal Singh along with three other persons, who put the son of the complainant in dicky of the Scorpio car and had taken him away. There was no reference of the petitioners and the ladies given at that stage. There was no role ascribed. The version given in the alleged supplementary statement was not recorded in the FIR.

[12]. In **Hardeep Singh vs. State of Punjab and others, 2014(1) RCR (CrI.) 623**, the Hon'ble Supreme Court summed up the conclusions and scope arising out of Section 319 Cr.P.C. The relevant conclusions summed up in para No.110, is as under:-

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

Question Nos.I & 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 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 charge-sheeted 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 charge-sheeted 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.”

[13]. Degree of satisfaction required under Section 319 Cr.P.C., is much more higher than the *prima facie* satisfaction at the time of summoning. The test that has to be applied is one which is more than *prima facie* case as required at the time of framing of charge and just short of final conclusion. The scope of extent of powers of Court to summon any person as an accused during course of inquiry or trial in exercise of powers under Section 319 Cr.P.C., has been set at rest by the aforesaid **Hardeep Singh's** case (supra). The legal position has been summarised in para Nos.98 and 99 of the aforesaid judgment.

For ready reference para Nos.98 and 99 of the said judgment are reproduced hereunder:-

“98. 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.

99. 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.”

[14]. The powers by the trial Court under Section 319

Cr.P.C, are to be exercised on the basis of satisfaction that has to be arrived at on the basis of evidence led before it. Degree of satisfaction for invoking powers under Section 319 Cr.P.C., is the test of *prima facie* case having more degree of satisfaction than the one required for summoning the accused when cognizance is taken and process is issued. Though the test of *prima facie* case remains the same, but degree of satisfaction under Section 319 of Cr.P.C., is much higher than the degree of satisfaction required for summoning at the stage of taking cognizance and issuance of process. It is only the degree of satisfaction that distinguishes the concept of *prima facie* case in both the eventualities i.e. how the judgment of **Hardeep Singh's** case (supra) has been further highlighted in aforesaid context in **Babubhai Bhimabhai Bokhiria and anothers vs. State of Gujarat and others, 2014(5) SCC 568**. Para No.8 of the said judgment reads as under:-

“8. Section 319 of the Code confers power on the trial Court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the Investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of *prima facie* case being made out is same as that when the cognizance of the offence is taken and process issued, the

degree of satisfaction under Section 319 of the Code is much higher.”

[15]. While answering the question No.4, the Hon'ble Apex Court has ultimately answered the question in the following manner:-

“The conclusion drawn by the Apex Court is that even if a person is not named in the FIR or a person named in the FIR but has not been chargesheeted and a person who has been discharged can be summoned under Section 319 Cr.P.C.”

[16]. Perusal of the FIR reveals that the petitioners were never named in the FIR. Even during the course of investigation, names of the petitioners were not came up, nor they were made as accused. Neither the petitioners were challaned, nor they were put in column No.2. It was only on a subsequent supplementary statement of the complainant which was signed statement, names of the petitioners came to fore. Now the question arises whether the said signed statement which was alleged to be a supplementary statement of the complainant could have been taken to be a statement under Section 161 Cr.P.C. In my considered opinion, the scope of the said statement was not a supplementary statement under Section 161 Cr.P.C., rather the same was hit by a statement under Section 162 Cr.P.C.

[17]. The parameters as laid down in **Hardeep Singh's case** (supra) would show that more than *prima facie* case is required to be seen which should be sufficient for perceiving reasonable prospects of ultimate conviction of the accused persons. *Prima facie* it can be appreciated at this stage that after recording the FIR in question on 09.02.2010, the complainant also gave a signed statement on 20.04.2010. Thereafter he also gave a supplementary statement on 13.05.2010. No such incriminating act was alleged *qua* the complicity of the petitioners. Challan was presented on 20.05.2010 only against Gurvinder Pal Singh. At the post framing of charge, the undated signed application came to be filed by the complainant, though the same was ordered to be placed on record vide order dated 30.07.2011, but without commenting upon the admissibility and evidentiary value of the same. Since the supplementary statement has already been allowed to be placed on record, the argument with regard to its admissibility and evidentiary value would be seen at the time of conclusion of the trial. At this juncture, it would be highly imaginary to comment upon the veracity of allegations forming subject matter of said undated supplementary signed statement of the complainant, even though, the same was allowed to be placed on record vide order dated 30.07.2011 passed by the Additional Sessions Judge, Ludhiana. The said order had

already attained finality. At that stage, petitioners were not even in picture. Petitioners had no occasion to comment upon the said order at that stage. It was only with the passing of impugned order dated 24.05.2012, the cause of action in favour of petitioner accrued.

[18]. At this juncture, it can be appreciated that the petitioners were not named in the FIR. During course of investigation their names did not crop up for consideration. They were not even made accused, nor they were shown to be innocent as per column No.2 of the challan. The complicity of the petitioners for the first time was raked up by way of undated supplementary statement of the complainant whose veracity and evidentiary value was not commented upon by the Court at the time of placing the same on record. The said signed statement whether would fall under the ambit of Section 162 Cr.P.C, is also required to be commented upon by the Court. In the light of statement of fact recorded in the FIR, whether undated supplementary statement would be sufficient to allege complicity of the petitioners or not, is also required to be revisited by the trial Court.

[19]. At this juncture, it is required to be established whether impugned order can be passed on the basis of statements on record? Whether provisions in terms of Section 319 Cr.P.C., can

be attracted on the strength of undated statement of the complainant which would fall for consideration of the Court under Section 162 Cr.P.C. Since the impugned order is totally silent with regard to the nature of the statement, therefore, at this stage, without commenting upon anything on the merits of this case, it would be just and expedient to direct the trial Court to look into the nature of application so allowed to be placed on record vide order dated 30.07.2011 and visualize the scope of such application viz.-a-viz., applicability of Section 162 Cr.P.C. if any, for the purposes of deciding the involvement of the petitioners under Section 319 Cr.P.C.

[20]. In view of above, impugned order dated 24.05.2012 is set aside. This case is remanded back to the trial Court to decide the same in the light of observations made above. Petition stands disposed of accordingly.

February 21, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No