

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

**CRM-M No.6885 of 2016
Decided on: 25.09.2017**

Harshdeep Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Ranjit Sharma, Advocate
for the petitioner.

Mr. K.S. Sidhu, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing the summoning order dated 07.06.2014 (Annexure P6) passed by the trial Court vide which the petitioner has been summoned as an accused under Section 319 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.4 dated 18.01.2.011 registered under Sections 326, 325, 323, 324, 148 and 149 of the Indian Penal Code (in short 'IPC') at Police Station Kathu Nangal, District Amritsar.

At the very outset, it may be noticed that the impugned order was passed on 07.06.2014 whereas the present petition is filed on 24.02.2016 without any explanation of delay in the petition.

Brief facts of the case are that the complainant – Raminder Pal Singh got the aforesaid FIR registered with the allegation that he along with his uncle – Gurbachan Singh were standing outside a shop when Manjinder Kumar @ Mukesh Kumar, his father – Sucha Lal, his uncle – Tarsem Lal, Gulshan Kumar, Amritpal Singh and the petitioner

– Harshdeep Singh armed with their respective datar reached there on the motorcycle and caught hold of him and caused injuries with their weapons. The allegation against the petitioner was that he also gave a datar blow on the right shoulder of the complainant. It is further alleged in the FIR that after the accused persons gave him injuries, he was rescued by the witnesses. During the investigation of the case, the Deputy Superintendent of Police, Amritsar (Rural) submitted a report on 04.07.2011 and as per this report, it was found that the petitioner has gone to his sister's house in a different village and was not present at the spot. On the basis of the said report, an application dated 25.08.2011 was filed by the prosecution before the trial Court (Annexure P3) for discharging the petitioner in the case and separately a report under Section 173 Cr.P.C. was submitted against 02 persons namely Manjinderjit Kumar and Amritpal Singh whereas 04 persons were kept in Column No.2 including the petitioner. Thereafter, the trial Court vide its order dated 26.08.2011, on the application filed by the prosecution, discharged the petitioner and adjourned the case for framing of the charge against other accused persons.

Later on, charges were framed against the aforesaid 02 accused persons i.e. Manjinderjit Singh and Amritpal Singh and in the prosecution evidence, the complainant, Raminderpal Singh appeared as PW1 and supported the version given in the FIR and levelled the same set of allegations as mentioned in the FIR. He stated that the petitioner has caused injuries on his left shoulder with his datar. Thereafter, when the statement of the complainant was recorded, he moved an application dated 05.09.2012 under Section 319 Cr.P.C. (Annexure P5) .

The trial Court vide its impugned order dated 07.06.2014, allowed the application filed by the complainant and summoned all the 04 persons including the present petitioner as an accused to face trial under Sections 326, 325, 323, 324, 148 and 149 IPC.

The petitioner has now challenged the order dated 07.06.2014 passed by the trial Court by way of filing the present petition.

It is submitted on behalf of the petitioner that once the petitioner was found to be innocent as per the report of Deputy Superintendent of Police, Amritsar (Rural) and the police itself moved an application for discharging the petitioner which was allowed by the trial Court vide order dated 26.08.2011, the order of discharge amounts to acquittal of the petitioner. It is next submitted by counsel for the petitioner that this order was never challenged by the complainant or the prosecution by way of filing an appeal and, therefore, it has become final and thus, summoning the petitioner under Section 319 Cr.P.C. is illegally not maintainable.

Counsel for the petitioner has further submitted that no fresh evidence has come on record on the basis of which the petitioner has been summoned in the case under Section 319 Cr.P.C.

On the other hand, counsel for the State has opposed submission made by counsel for the petitioner and submitted that there is no bar for the Magistrate to summon an accused which has been discharged earlier to face trial if fresh material has come on record during the trial. In support of his contention, counsel for the State has relied upon the judgment passed by the Hon'ble Supreme Court "**Reeta**

Nag vs State of West Bengal and others”, 2009(4) RCR (Criminal) 207 to contend that the Magistrate can summon a person as an accused under Section 319 Cr.P.C. even if he was earlier discharged by the Magistrate. Similar view was taken by this Court in ***“Balwinder Kaur @ Baby vs State of Punjab”***, 2004(1) RCR (Criminal) 1006.

It is further submitted by counsel for the State since the prosecution case rest upon the eyewitnesses as well as the medical evidence, the petitioner has rightly been summoned under Section 319 Cr.P.C. as the complainant has deposed on oath that the petitioner inflicted injury on his right shoulder with his weapon i.e. a datar.

After hearing counsel for the parties, I find no merit in the present petition.

In view of ***Reeta Nag's case (supra)***, the Hon'ble Supreme Court has held as under:-

“5. Apart from the above, the learned Single Judge also took the view that merely because out of sixteen accused persons ten had been discharged, it did not necessarily mean that they could not be tried subsequently. The learned Judge then referred to the provisions of Section 319 Criminal Procedure Code which empower the Court to proceed against the other persons if any material is disclosed against them during the trial. The learned Single Judge observed that although the Magistrate could not direct reinvestigation on the basis of an application made by the de facto complainant and that too on the technical ground of non-service of notice upon him, he could take recourse to Section 319. Criminal Procedure Code at the stage of trial.

6 to 18. xxxx xxxx xxxx xxxx

19. *What emerges from the above-mentioned*

decisions of this Court is that once a charge-sheet is filed under Section 173(2) Criminal Procedure Code and either charge is framed or the accused are discharged, the Magistrate may, on the basis of a protest petition, take cognizance of the offence complained of or on the application made by the investigating authorities permit further investigation under Section 173(8). The Magistrate cannot suo moto direct a further investigation under Section 173(8) Criminal Procedure Code or direct a re-investigation into a case on account of the bar of Section 167(2) of the Code.

20. *In the instant case, the investigating authorities did not apply for further investigation and it was only upon the application filed by the de facto complainant under Section 173(8), was a direction given by the learned Magistrate to re-investigate the matter. As we have already indicated above, such a course of action was beyond the jurisdictional competence of the Magistrate. Not only was the Magistrate wrong in directing a re-investigation on the application made by the de facto complainant, but he also exceeded his jurisdiction in entertaining, the said application filed by the de facto complainant.*

21. *Since no application had been made by the investigating authorities for conducting further investigation as permitted under Section 173(8) Criminal Procedure Code, the other course of action open to the Magistrate as indicated by the High Court was to take recourse to the provisions of Section 319 of the Code at the stage of trial.*

22. *We, therefore, see no reason to interfere with the order of the High Court since it will always be available to the Magistrate to take recourse to the provisions of Section 319 if any material is disclosed during the examination of the witnesses during the trial.”*

Thus, the trial Court, in exercise of its power under Section 319 Cr.P.C. has the power to summon an accused person even if he has been discharged by the Court on an earlier occasion. Since, it has come in the statement of PW1, the injured witness that the petitioner has caused injuries to him with his respective weapon, the trial Court was justified in summoning the petitioner as sufficient evidence has come on record. Therefore, I find no illegality in the impugned order dated 07.06.2014 passed by the trial Court. Moreover, the present petition has been filed after a delay of more than 1½ years of passing the impugned order without explaining delay.

For the foregoing reasons, the petition fails and is accordingly dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

25.09.2017
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No