

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

**CRR No.3144 of 2014
Date of Decision: 15.05.2017**

Randhir Singh

.....Petitioner

Vs

Gurdev Singh & others

....Respondents

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

Present: Mr. R.K. Singla, Advocate
for the petitioner.

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

None for respondent No.3.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 06.09.2014 passed by Additional Sessions Judge, Ludhiana vide which an application under Section 319 Cr.P.C. moved by him for summoning respondent No.3 as an additional accused was dismissed.

[2]. Brief facts are that the FIR was registered at the instance of petitioner with the allegations that on 21.10.2012 marriage of Jasbir Singh (cousin brother of the complainant) was fixed, where entire family of the complainant had gone to

attend the same. The *barat* returned along with the *Doli* in the evening. Complainant and his brother Gurmit Singh were asking to park the vehicle towards one side so that there may not be any hindrance in the traffic. At about 5.30 p.m. one Scorpio came there which was being driven by Gurdev Singh. Harmail Singh was sitting by the side of the driver and was armed with *gandasi*. The vehicle was stopped. The complainant-party requested them to park the vehicle towards one side of the street. Gurdev Singh started insisting that the vehicle will be parked later on. In between, Manjit Singh who was already sitting in front of his house also came there duly armed with *gandasi*. On seeing him, Gurdev Singh and Harmail Singh alighted from their vehicle. Gurdev Singh was having his licensed revolver. Harmail Singh raised a lalkara that Gurmit Singh and Randhir Singh should not be left. Gurdev Singh fired three gun shots towards the complainant which hit on the left side of his abdomen and on the left wrist. Manjit Singh gave *gandasi* blow to Gurmit Singh on his right side of the head. On hearing the alarm, father and uncle of the complainant came there. They with the help of other people took revolver from Gurdev Singh, otherwise he would have fired more gun shots on the complainant-party. Thereafter all the assailants fled away from the spot.

[3]. During course of the investigation, Harmail Singh was found to be innocent. Gurdev Singh and Manjit Singh are facing trial and, therefore, vide order dated 18.09.2015 passed by this Court, their names were deleted from the array of respondents in the present petition.

[4]. Complainant was examined as PW-1 and he reiterated the version recorded in the FIR. Thereafter, an application under Section 319 Cr.P.C. was filed for summoning respondent No.3 Harmail Singh as an additional accused to face trial. Additional Sessions Judge, Ludhiana vide order dated 06.09.2014 dismissed the application with the observations that Harmail Singh was shown to be armed with *gandasi* in his hand, but no injury was attributed to him except raising of *lalkara*.

[5]. Learned counsel for the petitioner sought to argue the case with reference to the cross version and the proceedings undertaken by the complainant for securing the arrest of the main accused at the relevant stage and for proper investigation of the case.

[6]. In my opinion, co-related proceedings are not necessary for the purposes of deciding the application under Section 319 Cr.P.C., insofar as the role of Harmail Singh is concerned. Harmail Singh was found to be innocent during

course of investigation. No overt act was attributed to him except raising of *lalkara* and armed with *gandasi* which was not used in the commission of the offence.

[7]. While appearing as PW-1 the complainant has only reiterated the allegations of the FIR so far as the alleged complicity of respondent No.3 is concerned. In the application filed under Section 319 Cr.P.C., the allegation of conspiracy was raised against the petitioner in association with Gurdev Singh and Manjit Singh. The statement of fact given in the application as well as in the statement of the PW-1 was the reiteration of the allegations in the FIR. The allegations were duly inquired into by the Police and nothing incriminating was found against respondent No.3 Harmail Singh.

[8]. Perusal of the statement of complainant as PW-1 would reveal that no material/allegations could be substantiated and the statement would not provide any such material of more than *prima facie* case so as to record greater degree of satisfaction as required under Section 319 Cr.P.C. for summoning the additional accused at this stage. The Police on the basis of material collected, even from statements recorded under Section 161 Cr.P.C. did not consider the material to be sufficient for framing charges against respondent No.3 Harmail Singh and declared him as innocent. The statement of fact given by the

complainant in the FIR and the material collected by the Police were not considered *prima facie* by the Police for filing challan against respondent No.3 Harmail Singh and, therefore, the statement recorded before the trial Court as PW-1 without establishing more than *prima facie* evidence against respondent No.3 would not satisfy the ingredients in terms of Section 319 Cr.P.C. in view of **Hardeep Singh v. State of Punjab and others, 2014(1) RCR (Crl.) 623.**

[9]. In **Hardeep Singh's** case (supra), power under Section 319 Cr.P.C has been held to be discretionary and extraordinary in nature. These powers are to be exercised sparingly and only in those cases where the circumstances of the case so warrant. These powers are not to be exercised simply because the Court is of the opinion that some other persons may also be guilty of committing that offence. These powers should be exercised only where strong and cogent evidence comes on record against the person which should be more than *prima facie* in nature as required for framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction of the accused. In the absence of such satisfaction, the Court should refrain from exercising the powers under Section 319 Cr.P.C.

[10]. The Hon'ble Apex Court summed up the conclusions

and scope arising out of Section 319 Cr.P.C in concluding part of the judgment in Hardeep Singh's case (supra) :-

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.”

[11]. 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 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."*

[12]. The powers of 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 v. 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.”

[13]. If the aforesaid yardstick is applied to the facts of the present case, then it will be found that on the basis of material collected by the Police, respondent No.3 was found to be innocent in the report under Section 173 Cr.P.C which was filed after due consideration of statements of the witnesses recorded under Section 161 Cr.P.C. The material so collected by the Police was not considered to be sufficient for framing charge against respondent No.3 by the Court. Even the Court did not take cognizance on the material collected by the Police, so far

complicity of respondent No.3 is concerned.

[14]. The statement of complainant recorded as PW-1 has not provided any such additional material by presenting application under Section 319 Cr.P.C. Once the evidence so collected by the Police was not considered *prima facie* material for framing charge against respondent No.3, then with the statement of PW-1, the material cannot be presumed to be intensified in terms of alleged culpability of respondent No.3, particularly when nothing additional incriminating material has come on record in the statement so made before the Court. The perusal of statement of PW-1 would not give any rise to more than *prima facie* material which will create reasonable prospects of conviction of respondent No.3 or would facilitate forming of higher degree of satisfaction i.e. more than *prima facie* in nature for summoning respondent No.3 as an additional accused. There cannot be any such degree of satisfaction on the basis of statement of PW-1 in the given set of circumstances.

[15]. In view of above, I am of the view that the impugned order dated 06.09.2014 passed by Additional Sessions Judge, Ludhiana does not suffer from any illegality or impropriety so as to invoke revisional jurisdiction of this Court under Section 401 Cr.P.C.

[16]. The present crl. revision petition is dismissed accordingly.

May 15, 2017

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No