

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

1. CRR No.3286 of 2015

Santosh and another

... Petitioners

Versus

State of Haryana

... Respondent

2. CRR No.3405 of 2015

Ram Juwari

... Petitioner

Versus

State of Haryana

... Respondent

Date of decision: 4th October, 2017

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Amit Khatkar and Mr. Arvind Bansal,
Advocates for the petitioners.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for the respondent/State.

Mr. Vinod Bhardwaj, Advocate for the complainant.

FATEH DEEP SINGH, J.

Since both these revision petitions have arisen out of the common order dated 06.08.2015 passed by the Court of learned Additional Sessions Judge, Kaithal thereby allowing the application under Section 319 Cr.P.C. moved by the prosecution to summon Ram Niwas, Ram Juwari (petitioner), Smt. Santosh (petitioner) and Smt. Gurmeet (petitioner) as additional accused and since common

question of law and facts is involved, are being taken up for disposal together.

The brief allegations as to the background of the present case got registered by way of FIR No.101 dated 14.07.2014 under Sections 302, 34 IPC pertaining to Police Station Rajound, District Kaithal, are that the complainant Satbir Singh got recorded his statement that he was having a son Pardeep, aged around 23 years and that few days prior to the present occurrence one Mahipal had raised allegations against Pardeep for having teased the wife of the said person and for taking away her jewellery for which the matter was settled before the panchayat whereby complainant had paid Rs.20,000/- to Mahipal. It is alleged that Mahipal at that point of time had threatened the complainant side. It is alleged that on 13.07.2017 around 09:30 p.m. Suman wife of Mahipal called Pardeep to her house on phone and it is alleged that Mahipal, Jinda, Paramjeet, Ram Niwas and Ram Juwari forcibly lifted Pardeep and took him to the *Chobara* of Mahipal's house and there they caused him injuries with Dandas and bricks leading to his death. Petitioners were found innocent during investigations and subsequent upon recording of evidence, present application has come about.

The law on exercise of powers under Section 319 Cr.P.C. has been well laid down in the case of '**Hardeep Singh v. State of Punjab**' **2014(1) RCR (Criminal) 623**, wherein following observations have been made:

“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.”

In the present case, PW1 Kuldeep Singh has testified wherein he claims to be an eye witness of this occurrence and has attributed specific role to the petitioners Ram Juwari, Santosh and Gurmeet, holding out that they were having dandas and bricks in their hands and caused injuries to the deceased and when even this witness tried to rescue the victim the petitioners did not spare him and they even threatened this witness. Even in the FIR of the case where though name of Santosh and Gurmeet does not find mention but name of Ram Juwari has been well elucidated with specific role in commission of the offence. However, it also finds mentioned therein that wives of Mohinder and Rajinder who is also known as Jinda (invariably suggesting names of Santosh and Gurmeet) in connivance with their co-accused have committed this offence. Thus, in the light of contentions raised by learned counsel for the petitioners who have placed reliance on **‘Babubhai Bhimabhai Bokhiria and another v. State of Gujarat and others’ 2014(5) SCC 568; and ‘Chander and another v. State of Haryana’ 2015(3) RCR (Criminal) 764** to hammer home the point that provisions of Section 319 Cr.P.C. are not to be strictly applied, since there is due mention in the FIR about these accused and subsequently in the evidence of the eye-witness account, the Court below was certainly satisfied and held the opinion that apparently there was prima-facie case for issuing process to these persons. In the ratio laid down in **Hardeep Singh’s case (ibid)** their Lordships have held that the test of prima facie is to be applied and not

that there was evidence sufficient to hold guilt of the persons so sought to be summoned as additional accused.

The Court below while exercising powers under Section 319 Cr.P.C. was of the view that the evidence that has come on record, needs to be given effect to in view of the averments therein and has come to a totally justifiable conclusion that the petitioners deserve to be tried together with the accused who have already been facing trial and therefore, does not warrants any interference. Learned counsel for the petitioners could not bring forth any illegality or impropriety in the impugned order. No other argument was advanced. Thus, both the petitions being without any merit, stand dismissed.

(FATEH DEEP SINGH)
JUDGE

October 4, 2017

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No