

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

CRR No.2748 of 2016 (O&M)

Date of Decision: 21.02.2017

Hazari

.....Petitioner

Vs

State of Haryana and ors.

....Respondents

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

Present: Mr. R.A. Sheoran Advocate
for the petitioner.

Mr. P.P. Chahar, D.A.G., Haryana.

Mr. Sumit Sangwan, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 25.07.2016 passed by Additional Sessions Judge, Bhiwani whereby application under Section 319 Cr.P.C. moved by the petitioners was dismissed.

[2]. Brief facts are that FIR was registered on the basis of statement of the complainant-petitioner, who alleged that in the morning at about 6:30 A.M., when he was going to Bhiwani on foot through the path of Sungarpur to meet the DSP, then on the *rasta* near temple four persons namely Mahender, Ishwar,

Sanajy and Monu alighted from a vehicle and surrounded him. Mahender gave a pistol butt blow on his left hand and all the persons put him in the vehicle and took him to the house of Ramesh. At that place, Ramesh son of Hari Singh, Bhani wife of Bhana and Guddi wife of Ramesh were present there and they gave beatings to him and dragged him in the *gali* outside the house of Ramesh. Daughter of the complainant brought him to the CHC Tosham and the Doctor referred him to General Hospital, Bhiwani. The accused also took away Rs.10,000/-.

[3]. In the challan submitted by the Police, the police gave a version that Monu, Bhani and Guddi have not been arrested and against their arrest separate challan would be filed.

[4]. Learned counsel for the petitioner vehemently submitted that in the challan, the complicity of the respondent Nos.2 to 4 was not omitted, rather a search was in operation and it was recorded that a separate challan would be presented against them after their arrest.

[5]. According to learned counsel, offence under Section 367 IPC was added when Monu was not even declared innocent. Initial version got recorded by the complainant showed the complicity of Monu in the kidnapping of the complainant. The alleged recording of statement of Director of the Company in order to show the duty hours of Monu has not come forth on

record. In the supplementary challan, Monu has been declared as innocent.

[6]. The observations made by the Additional Sessions Judge, Bhiwani in para no.9 of the impugned order while declining the application are claimed to be totally non-existent inasmuch as that the case was not of simple injuries as offence under Section 325 IPC was found to have been committed. No civil litigation was pending between the parties and the observation of the Additional Sessions Judge to this effect was wrong. So far respondent Nos.3 and 4 are concerned, petitioner does not lay his claim for summoning them as additional accused under Section 319 Cr.P.C. The only stress was in respect of involvement of Monu as his role was in existence from the very beginning in the FIR. The deletion of offence under Section 25 of the Arms Act, according to learned counsel could not be raked up timely as receipt or non-receipt of butt injury cannot be appreciated at this juncture.

[7]. From the record it can be culled out that a report under Section 173 Cr.P.C was submitted wherein offences under Sections 325, 367 IPC were included. Investigation against Bhani, Guddi and Monu was pending when first challan was presented against the main accused. During subsequent investigation, Bhani, Guddi and Monu were found to be innocent

and supplementary challan under Section 173(8) Cr.P.C., was submitted to the Court on 01.01.2016.

[8]. In **Hardeep Singh v. State of Punjab and others** **2014(1) RCR (Crl.) 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.”

[9]. 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."*

[10]. 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 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.”

[11]. 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.”

[12]. The FIR showed the name of Monu son of Ramesh at the time of first occurrence when the complainant was allegedly surrounded and taken away in a vehicle after giving pistol butt blow by Mahender. Offence in terms of Sections 367 and 325 IPC were found to have been committed in the challan. Additional Sessions Judge while dismissing the application has recorded the observations to the following effect:-

- (a) Ishwar, Mahender, Ramesh and Sanjay have already been facing trial.
- (b) Complainant sought summoning of respondent Nos.2 to 4 as additional accused to face trial. Out of them respondent Nos.3 and 4 are ladies.
- (c) Only one injury was received by the complainant and injuries were found simple in nature. Such injury was a pistol butt blow attributed to Mahender.
- (d) Civil litigations are pending between the parties in respect of partition of land.
- (e) The persons sought to be summoned were left

out by the Police after thorough investigation.

No fresh evidence has come on record.

[13]. The requirement of Section 319 Cr.P.C., has already been commented upon by the Hon'ble Apex Court in **Hardeep Singh's** case (supra). It appears that factum of injury covered under Section 325 IPC has been found during course of investigation and in addition to that offence under Section 367 IPC is also found to have been committed as per report under Section 173 Cr.P.C.

[14]. During course of arguments, it was a conceded position that report under Section 173 Cr.P.C., showed the complicity of the accused in terms of Sections 325 and 367 IPC and there was no civil litigation pending between the parties on account of any partition of land. Some of the observations passed by the Additional Sessions Judge, Bhiwani while dismissing the application are found to be non-existent.

[15]. Vide order dated 05.08.2016 passed by this Court, learned counsel for the petitioner did not press this petition *qua* respondent Nos.3 and 4 and only based his argument to the extent of complicity of respondent No.2 i.e. Monu son of Ramesh.

[16]. Now the fact remains as to whether the case is found more than *prima facie* and less than grant of ultimate conviction

on the basis of material on record. Since the trial Court led foundation of the impugned order on the basis of observation in para No.9, therefore, it would be just and appropriate to set aside the impugned order at this stage and remand the case to the Additional Sessions Judge, Bhiwani to decide the case afresh without being influenced by any of the observations made hereinabove. The Court would apply its mind independently on the basis of material on record and would pass fresh order in accordance with law. Ordered accordingly.

[17]. In view of above, this revision petition is disposed of.

February 21, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No