

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR No.4050 of 2014

Date of Decision: 18.07.2017

Baldev Singh

...Petitioner

VERSUS

State of Punjab & Ors.

....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present:- Mr. Amandeep Singh Manaise, Advocate for the Petitioner.

Mr. A.A.Pathak, Assistant Advocate General, Punjab.

Mr. S.S.Sidhu, Advocate for Respondent Nos.2 to 5.

SUDIP AHLUWALIA, J.

This Revisional Application is directed against the impugned Order dated 2.12.2014 passed by the Court of the Ld. Additional Sessions Judge, Fazilka in case No.87-1/24.12.2013 arising out of FIR No.89 dated 17.07.2013 and the cross Rapat No.30 dated 17.7.2013. Vide the impugned Order, the Ld. Court below had rejected the application filed on behalf of the Petitioner/complainant for summoning Respondent Nos.2 to 5 as additional accused persons to face trial in the said case.

2. In the original Rapat lodged by the complainant, names of the various persons alleged to have been involved in the occurrence, including Respondent Nos.2 to 5 had been mentioned. However after conducting investigation, the Police sent up the challan against some accused persons but not against the present respondents. During the course of trial however, the complainant and some other witnesses deposing after him again gave

statements alleging involvement of these Respondents in the occurrence after which the application under Section 319 Cr.P.C. was filed through the prosecution on 17.10.2014, which was subsequently rejected vide the impugned Order.

3. The Ld. Trial Judge rejected the application under Section 319 Cr.P.C. by recording the following observations -

“.....It is being seen in a routine manner that the parties to a litigation are in the habit for involving all the family members of the opposite party. Although, the persons named in the present application have been duly named in the statement of PW-1 Baldev Singh but the matter regarding involvement of the persons mentioned in the present application has already been scrutinized by the Investigating Officer. Since the persons named in the application have been found innocent during investigation and they have been rightly kept in column No.2 of the report filed under Section 173 Cr.PC. I do not find any justification to allow the application moved on behalf of the prosecution. Finding no merits in the present application, same is ordered to be declined.”

(Emphasis added)

4. It is thus seen that a major consideration behind such rejection was the observation of the Ld. Trial Court that litigating parties habitually seek to harass their opponents by involving all their family members in the case. In addition, the Ld. Trial Court also appears to be of the view that where any persons were found to be innocent by the Investigating Officer during investigation, in that case, the I.O's finding ought to be the last word on the subject. Such approach of the Ld. Trial Court would however, appear to be uncalled for in view of the decision of the Supreme Court in case **“Hardeep Singh Vs. State of Punjab and others” 2014(3) SCC 92**, according to which merits of the application under Section 319 Cr.P.C. ought to be tested on the basis of “evidence” forthcoming before the Court,

which is to be then scrutinized to see whether the same meet up to the standard of the satisfaction required to invoke such power under the Statute to arraign an accused.

5. At this juncture therefore, it would be appropriate to advert to the questions raised and then decided by the Apex Court in that case in relation to exercise of the powers under Section 319 Cr.P.C. which are set out as below -

“5. On the consideration of the submissions raised and in view of what has been noted above, the following questions are to be answered by this Bench:

(i) What is the stage at which power under Section 319 Cr.P.C. can be exercised?

(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?

(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?

(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 convicted?

(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 charged or who have been discharged?”

6. In the present case, the question No.(iv) noted above is certainly vital, and to an extent even question No.(v) is also attracted since admittedly some alleged culprits/accused persons were named in the original FIR, but were not sent up to face trial after investigation by the

Police.

7. The Ld. Trial Court therefore, ought to have endeavoured to see whether or not the evidence forthcoming before it not only through the statement of the complainant who deposed as PW-1, but also by the remaining prosecution witnesses, in their testimonies meet up to the standard prescribed and permitted by the Apex Court in answering the question No.(iv) already noted above. The relevant observations of the Supreme Court in this regard are as follows -

*“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.”*

8. Again question No.(v) above was answered by the Apex Court as follow:-

“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.”

9. In the present case admittedly, none of the four persons sought to be arraigned as accused persons were 'discharged' by the Court. On the other hand, all of them were specifically named in the Rapat No.30 dated 17.07.2013 lodged by the complainant/PW1 Baldev Singh, but they were not charge-sheeted. As such, the requirement of Sections 300/398 Cr.P.C is not applicable since they were not 'discharged'. They could therefore, also be summoned provided from the evidence they appear to be liable to face trial along with the others already being tried.

10. Unfortunately, the Ld. Trial Judge did not at all advert to the statements forthcoming against them in the testimonies of the complainant Baldev Singh (PW-1), Sukhjinder Singh (PW-2), Gurwinder Singh (PW-3) and Raja Singh (PW-4), who have all stated about the involvement of these four persons not actually charge-sheeted by the Police. There are statements on record directly against those four persons not only in the examinations-in-chief of those witnesses but also in their cross-examinations. Therefore, outright rejection of the application under Section 319 Cr.P.C. without referring to the evidence coming on record by the Ld. Trial Judge was certainly not in consonance with the decision of the Supreme Court in **'Hardeep Singh's case (supra)'**.

11. In all fairness therefore, the application ought to have been allowed, but the Ld. Trial Judge could have otherwise taken appropriate safeguards to ensure that the trial did not get inordinately delay on account

of arraignment of those four additional accused persons.

12. For the aforesaid reasons, the impugned Order is quashed. The present Revisional Application of the complainant is allowed with a direction upon the Ld. Trial Judge to add the Respondent Nos.2 to 5 as additional accused persons in the pending trial. It is further directed that after these Respondents' appearance and resumption of Trial in the Ld. Court below, none of the prosecution witnesses already examined would be permitted to be recalled for re-examination by the prosecution side. However, the defence side shall be at liberty to cross-examine them further in addition to the cross-examinations already done so far. The Ld. Court below shall thereafter endeavour to complete the trial in the pending cross-cases as expeditiously as possible, and preferably within a period of three months from the date of appearance of the Respondents.

(Sudip Ahluwalia)
Judge

July 18, 2017
AS

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***