

264-A

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

CRR No.4068 of 2014

Date of decision: March 24, 2017

Ravinder Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. R.S. Rai, Senior Advocate with
Mr. Depinder Singh, Advocate for the petitioner.

Mr. D.S. Virk, DAG Punjab.

Mr. D.S. Bali, Senior Advocate with
Mr. Akshay Jindal, Advocate for respondent No.2.

A.B. CHAUDHARI, J (Oral)

The present revision petition is directed against the order dated 20.11.2014 in Sessions case No.181 of 30.08.2014 CIS No.6/2014, passed by Additional Sessions Judge (A.S.J.-III), Ferozepur, by which the petitioner/complainant-Ravinder Singh was summoned under section 319 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') as an accused and separate CIS number with a title State through Joga Singh versus Ravinder Singh, was ordered to be registered.

In support, learned Senior counsel for the petitioner contended that the prosecution having completed the trial by examining all the prosecution witnesses against the accused-Joga Singh, the trial Court only was required to go ahead with the trial with Joga Singh only and complete the same. He submitted that accused-Joga Singh examined defence witnesses and relied on some supplementary investigation and then filed an

application under Section 319 Cr. P.C. for summoning the present petitioner/complainant as an accused in the same incident in which he has been accused of commission of murder. According to the learned Senior counsel for the petitioner, Section 319 Cr. P.C. does not contemplate such a odd situation where the complainant himself could be made accused at the fag end of the trial at the behest of the accused applying under Section 319 Cr. P.C. He submitted that the question is no more *res integra* and has concluded by two decisions of the Supreme Court in the case of *Michael Machado and another versus Central Bureau of Investigation*, 2000 AIR (SC) 1127 and thereafter, in the constitution Bench judgment of the Supreme Court in the case of *Hardeep Singh versus State of Punjab and others*, 2014(1) R.C.R. (Criminal) 623.

Per contra, learned senior counsel for respondent No.2 vehemently opposed the petition and argued that the trial Court has given sound reasons for exercising power under Section 319 Cr. P.C. against the petitioner/complainant. According to him, Section 319 Cr. P.C. does not create bar or provision for summoning the complainant himself as an accused, if there is a material on record, may be in the form of defence evidence or as the case may be showing the complicity of the complainant himself. According to him, there is evidence on record to show that the pistol that was used for firing shot belong to the petitioner and therefore, the trial Court did not make any mistake in allowing the application under Section 319 Cr. P.C., though, at the behest of accused-Joga Singh.

I have heard learned counsel for the rival parties at length. It is not in dispute that in the aforesaid sessions case No.181 of 30.08.2014 CIS No.6/2014, accused Joga Singh has been facing the trial in Sessions case

No.03 of 27.01.2014 in the Court of Additional Sessions Judge (A.S.J.-III), Ferozepur. It is also not in dispute that the prosecution tendered its entire evidence and closed its case. It is also not in dispute that the statement under Section 313 Cr. P.C., of the accused, was recorded and thereafter, accused examined some defence witnesses. It is at that stage, the accused-Joga Singh filed an application under Section 319 Cr. P.C. requesting for being tried in the murder case. In the wake of the admitted facts, I think the question that has fallen for consideration and framed by this Court on 10.08.2016, read thus:-

“(i) Whether in terms of Section 319 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.'), the complainant in the subject FIR could be summoned as an accused based on the deposition of the defence witnesses before the trial Court during trial when the basic ingredients of Section 319 Cr. P.C. is that such a proposed accused is required to be tried together with the accused already on trial?”

Section 319 Cr. P.C. read thus:-

“Power to proceed against other persons appearing to be guilty of offence:-

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard.

(b) subject to the provisions of clause (a), the case

may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

It is clear from the reading of above provision that the word used there is “together with the accused”.

In the background of the above said admitted facts, I think the question is no more *res integra*. In ***Michale Machado and another's*** case (supra), the supreme Court stated thus in Para-11:-

“xxxx. Second is that for such offence that other person could as well as tried along with the already arraigned accused.”

It is clear from the reading of the above that the person sought to be summoned under Section 319 Cr. P.C. should be the person who could be tried along with already arraigned accused.

The constitution Bench in ***Hardeep Singh's*** case (supra), in answer to the last question No.V, stated thus:-

“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.”

Looking at the back at the case at hand, the petitioner-Ravinder Singh who is the complainant, it is absolutely clear that he cannot be tried along with already arraigned accused. The case could not fall within the parameters of Section 319 Cr. P.C.

Upshot of the above discussion is that the present petition must

succeed. In the result, following order is passed:

ORDER

- (i) CRR No.4068 of 2014 is allowed;
- (ii) Impugned order dated 20.11.2014 in Sessions case No.181 of 30.08.2014 CIS No.6/2014, passed by Additional Sessions Judge (A.S.J.-III), Ferozepur, by which the petitioner/complainant-Ravinder Singh was summoned under section 319 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') as an accused, is quashed and set aside.

(A.B. CHAUDHARI)
JUDGE

March 24, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No