

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

CRR No. 792 of 2015 (O&M)

Date of Decision: 01.03.2017

Sunny Pandit @ Ajay Sharma & others

--Petitioners

Versus

State of Haryana & another

--Respondents

**CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.**

Present:- Mr. G.P. Singh, Advocate for the petitioners.

Mr. C.S. Bakshi, Addl. A.G., Haryana.

Mr. Rakesh Nagpal, Advocate for the complainant.

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**TEJINDER SINGH DHINDSA.J**

The instant revision petition is directed against the order dated 29.1.2015, passed by learned Additional Sessions Judge, Kurukshetra in terms of which an application under Section 319 Cr.P.C moved by the prosecution has been allowed and the petitioners herein have been summoned to face trial as additional accused in case FIR No.289 dated 8.8.2014 registered under Sections 302, 148, 149, 323, 341, 120-B, 506 I.P.C at Police Station, Pehowa, District Kurukshetra.

Brief facts emanating from the pleadings on record are that the FIR came to be registered on the complaint of Sunny son of Bharath Singh resident of Village Bhagal in relation to an occurrence that took place on 8.8.2014 and in which it was alleged that his brother Gaurav had been stabbed by one Anil Paunt and had been assaulted by a number of other persons including the present petitioners. Complainant had asserted that he and his brother were students of D.A.V. College, Pehowa. On the fateful day i.e. 8.8.2014 complainant along with certain others were standing in the

verandah of the college and upon hearing a noise “save save” he noticed that Anil Paunt having a knife in his hand along with certain others (including the present petitioners) had surrounded his brother. The complainant along with his companions having proceeded to save his brother, Anil Paunt gave a stab blow with the knife on the chest of Gaurav while others inflicted leg and fist blows. Gaurav is stated to have succumbed to his injuries on the same very day. Motive attributed by the complainant was that there was a group faction between students of village Bhagal and village Sarsa and it is on account of enmity amongst these two group factions that the accused had caused the death of Gaurav.

Investigation having been carried out, the final challan was presented only against Anil Paunt and the petitioners herein were declared innocent. Application under Section 319 Cr.P.C was moved by the prosecution upon recording of statement of PW-1 Sunny i.e. brother of deceased Gaurav before the Trial Court. Such application has been allowed in terms of the impugned order dated 29.1.2015.

Counsel for the parties have been heard at length.

Section 319 of the Code of Criminal Procedure reads as under:-

*“319. 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 upon which the inquiry or trial was commenced, 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 reheard;*

*(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.”*

The extent of power with the Court to summon persons other than the accused under Section 319 of the Code of Criminal Procedure to stand trial in a pending case has come up for consideration before the Hon'ble Supreme Court in a number of decisions. In **Lokpal v. Nihal Singh, 2006(2) RCR (CrL) 707**, it was observed as under:

*“...The court, while examining an application under Section 319 of the Code, has also to bear in mind that there is no compelling duty on the court to proceed against other persons. In a nutshell, for exercise of discretion under Section 319 of the Code all relevant factors, including those noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused.*

*It was furthermore observed:*

*“19. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the court can take*

*cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken...”*

In ***Lal Suraj @ Suraj Singh and another v. State of Jharkhand, 2009(1) RCR (Criminal) 504***, it had been held as follows:

*“...The principle of strong suspicion may be a criterion at the stage of framing of charge as all the materials brought during investigation were required to be taken into consideration, but, for the purpose of summoning a person, who did not figure as accused, a different legal principle is required to be applied. A court framing a charge would have before it all the materials on record which were required to be proved by the prosecution. In a case where, however, the court exercises its jurisdiction under Section 319 of the Code, the power has to be exercised on the basis of the fresh evidence brought before the court. There lies a fine but clear distinction.”*

In ***Hardeep Singh v. State of Punjab and others, 2014 (1) RCR (Criminal) 623***, the Hon'ble Supreme Court held that the power under Section 319 of the Code of Criminal Procedure is a discretionary and an extra-ordinary power. The same is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. Such power is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some of the person/s may also be guilty of committing that offence. Only where strong and cogent evidence occurs against the person from the evidence led before the Court that such power should be exercised and not in a casual and cavalier manner. It was also observed 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 would require 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 of the Code of Criminal Procedure.

In the facts of the present case the statement of PW-1 Sunny recorded on 20.1.2015 has been placed on record at Annexure A-1. It would be useful to reproduce the same:-

*“On 8.8.2014, I along with Gurpal, Amandeep, Surender, Jony, Prem were standing at the verandah of our college i.e. D.A.V. College, Pehowa. At about 12.10 P.M we heard the noise of “Bachao Bachao” and when we attracted to the noise and saw Anil Paunt present the court attacked on my brother with a knife in his chest, Sunny Pandit @ Ajay Sharma, Ponny @ Pawan, Chander Mony @ Chota, Pardeep brother of Ponny, Valik, Cheeta, Bhasu @ Subhash, Ankit were also beating with my brother and some of them were student of our college they are Sunny Pandit, Ponny, Pardeep brother of Ponny, Bhasi @ Subhash were student of our college and other outsider. We tried to rescue my brother. All the persons threatened us of dire consequences if you tried to save injured Gaurav. Then all the accused ran away from the spot. We took my brother Gaurav Mission Hospital, Pehowa for treatment where my brother Gaurav was declared dead by the doctor. My brother was died due to injuries caused by the above said accused. Police recorded my statement Ex. P1, which bears my signature, which was read over to me by the police and thereafter I put my signature on it. Accused Anil Paunt is present in the court today. Other accused Sunny Pandit @ Ajay Sharma, Ponny @ Pawan, Chander Monny @*

*Chhota, Pardeep, Vakil, Cheeta, Bhasu @ Subhash and Ankit were not challaned by the police.*

*XXX by Shri Kamal Kant Aggarwal, Advocate for accused Anil.*

*I am regular student of B.A Part-I in D.A.V College, Pehowa. Gurpal, Jonny and Amandeep are also regular students of the said college, however, Surender and Prem are not the students of D.A.V College, Pehowa. Above said Prem and Surender are not students of any school or college. They had come to meet me in the college. Jonny is son of Shri Bira Ram and is a resident of village Balbera Tehsil Gulla, Distt. Kaithal. Surender son of Shri Randhir Singh and is a resident of village Bhagal. Gurpal and Amandeep are also resident of village Bhagal. I do not know any Rampal, Goggi, Nathi, Jaggu, Pinda all residents of village Bhagal or Hansi, I also do not know Balraj, Nannu, Ravi, Sohan all residents of village Balbera and Pardeep Singh of village Aru Khurd.*

*I had gone to college on 8.8.2014 at about 11.30 A.M. I had not marked my presence in my class. I had seen all the above said accused causing injuries to my deceased brother namely Gaurav. Gaurav who was a regular student of B.A. Part-II in the said college. I do not know at what time he had come to college on that day. I also do not know as to whether he had marked his presence in any class or not. I had taken to my brother to Mission Hospital, Pehowa in a ambulance. Above said Gurpal, Surender, Prem and Amandeep had accompanied me to the hospital in the same ambulance. Police had reached in the hospital at about 2.00 P.M and then I made my statement Ex.P1 at about 3.00/3.15 P.M.*

*(At this stage an application under Section 319 Cr.P.C moved by the prosecution and learned defence counsel requested to adjourn the further cross-examination of the witness till the disposal of the said application. Heard. Allowed.)”*

A perusal of the statement of PW-1 would reveal that he has reiterated his initial version relating to the occurrence that took place on 8.8.2014 in pursuance to which the FIR had been registered. As per deposition of PW-1 leg and fist blows are attributed to the present petitioners and on the person of deceased Gaurav.

In the impugned order dated 29.1.2015, passed by the learned Additional Sessions Judge, Kurukshetra, the discussion while accepting an application under Section 319 Cr.P.C is to the following effect:-

*“7. Adverting to the facts of the present case, the statement made before this court by complainant appearing as PW-1 is specific. Be that as it may, names of the persons, now sought to be summoned find mentioned in the complaint as well as in the statement made by the complainant as PW-1. The report made by the police cannot be binding. There are specific allegations against Sanni Pandit alias Ajay Sharma, Ponny alias Pawan, Chander Mani Chhota, Pardeep brother of Soni, Vakil, Cheeta, Bhajju alias Subhash and Ankit who were not challaned by the police. Prima facie, there is sufficient evidence to summon these persons as additional accused. Accordingly, the application under Section 319 Cr.P.C is accepted. Sanni Pandit alias Ajay Sharma, Chander Mani Chhota, Vakil Singh, Jitender alias Cheeta, Vasudev alias Vasu, Pawan Kumar alias Ponny, Aakush Sharma alias Ankit and Pardeep are ordered to be summoned as additional accused. Issue summons to aforesaid additional accused for 10.2.2015.”*

In the considered view of this Court, the impugned order summoning the present petitioners as additional accused cannot sustain in the light of the settled principles and parameters laid down by the Hon'ble Apex Court in exercise of powers under Section 319 Cr.P.C and as

crystalized in the judgements noticed herein above.

The court below has completely overlooked the aspect that no fresh evidence has been brought forth which would indicate more than mere probability of the complicity of the present petitioners in the offence. There has been no discussion whatsoever as regards the final investigation report in which the petitioners had been found innocent. Counsel for the petitioners during the course of arguments has asserted that the names of the petitioners had been kept in column 2 of the challan based upon a footage of C.C.T.V cameras that had been installed at the place of occurrence. As per prosecution version, apart from the knife blow attributed to Amit Paunt, Gaurav deceased had been inflicted leg and fist blows by a number of persons including the present petitioners. During the course of arguments, it has gone uncontroverted that in the Post Mortem Report three injuries have been shown i.e. one stab wound and two other simple injuries i.e. an abrasion on the elbow and a laceration due to peeling of the nail area. Prima facie, the injuries reflected in the Post Mortem Report are not corroborative of the version of the complainant that Gaurav (deceased) was beaten up and given fist and leg blows by 8 to 9 persons.

An order under Section 319 Cr.P.C is not to be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be passed by the court so as to satisfy the ingredients of the provision. For the aforementioned purpose the court was required to apply stringent tests and one of these tests as laid down in ***Hardip Singh's*** case (supra) was that even though, only a prima facie case is to be established from the evidence led before the court but it would require much stronger evidence than mere probability of complicity of such persons sought to be summoned as

additional accused.

This Court would have no hesitation in holding that the impugned order dated 29.1.2015, passed by the learned Additional Sessions Judge, Kurukshetra accepting an application under Section 319 Cr.P.C summoning the petitioners herein as additional accused, has been passed in a routine and mechanical fashion and in utter disregard of the settled position of law in respect of the scope and ambit of powers under Section 319 Cr.P.C.

For the reasons recorded above, the present revision petition is allowed. The impugned order dated 29.1.2015, passed by the learned Additional Sessions Judge, Kurukshetra, is set aside. Consequentially the order framing charges against the present petitioners as also the charge sheet both dated 24.2.2015, are quashed. Matter is remitted back to the Trial Court to reconsider the issue in the light of the parameters laid down for exercise of power under Section 319 Cr.P.C by the Hon'ble Apex Court in ***Hardip Singh's*** case (supra). A fresh order be passed within a period of three months from the date of passing of this order after hearing the parties concerned.

It is clarified that the directions contained in the present order to reconsider the matter may not be construed that this Court has in any manner expressed an opinion with regard to the petitioners in this petition to be summoned as additional accused. Such aspect is to be dealt by the Trial Court at the stage of passing the order afresh and on merits.

Petition is disposed of accordingly.

**(TEJINDER SINGH DHINDSA)**  
**JUDGE**

**01.03.2017**

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Whether speaking/reasoned: Yes  
Whether Reportable: Yes