

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

CRR-1032 of 2017 (O&M)

Date of decision: 17.05.2017

Krishan Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Ms. Deepika, Advocate
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

Jitendra Chauhan, J. (Oral)

This revision has been filed against the impugned order dated 02.03.2017, passed by Sessions Judge, Ropar, whereby the petitioner was summoned under Section 319 Cr.P.C. as an additional accused and order dated 06.03.2017, vide which the charges under Section 302 read with Section 34 of IPC has been framed against the petitioner.

It is contended that learned Sessions Judge, Ropar, has misread the legal position with regard to the exercise of powers under section 319 of the Code of Criminal Procedure (for short 'Code') while passing the impugned order dated 02.03.2017. She

further argued that on the statement of Jarman Singh, brother of deceased Gurbhag Singh, initially the present FIR was registered under Sections 279 and 304-A of IPC against unknown driver/vehicle alleging that his brother Gurbhag Singh and one Parmanand were hit by some unknown vehicle when they were travelling on motorcycle on 23.08.2015 and later on, his brother died during treatment. Thereafter, complainant Jarman Singh moved an application to SSP, Rupnagar alleging therein that, in fact, on 23.08.2015, accused Parmanand, Himmat Ram and Krishan Kumar took his brother to a wine shop and all of them consumed liquor. Then all the aforesaid persons gave merciless beatings to his brother Gurbhag Singh and he succumbed to his injuries in PGI, Chandigarh. Since, the complainant had taken different stands, therefore, his version cannot be relied upon. The learned Court has not taken into consideration his earlier statement and the fact that on 27.08.2015, brother of deceased signed the MLR wherein it was clearly mentioned that Gurbhag Singh died because of the injuries received on account of road accident.

On the other hand, the learned State counsel states that the trial Court finding prima facie material has rightly summoned the petitioner as an additional accused. He further states that the trial is at the fag end and the case is fixed for defence evidence and arguments.

Heard.

Section 319 of the Code reads as under:-

“Section 319 Cr.P.C., 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 the 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 a settled principle of law that in the exercise of its jurisdiction under section 319 of the Code, the Court is under a bounden duty to examine whether the evidence on record is sufficient to form a subjective opinion regarding the conviction of

the persons so sought to be summoned to face trial. In **Hardeep Singh Vs. State of Punjab**, rendered in 2014(3) SCC 92, it was held as under:-

“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, initially the final police report under Section 173 Cr.P.C., was filed against Parmanand and Himmat Ram and the petitioner was kept in column No.2. Accused Parmanand and Himmat Ram were charge-sheeted under Sections 302 and 34 of IPC. During trial, prosecution moved an application under Section 319 Cr.P.C. for summoning petitioner-Krishan Kumar as an additional accused. In the said application, it has been pleaded that

PW Jarman Singh, during examination-in-chief before the Court, deposed that Krishan Kumar along with co-accused gave serious injuries to his brother Gurbhag Singh. Perusal of statement of Jarman Singh (Annexure P-11) shows that he has made a categorical statement that petitioner had given beatings to his brother Gurbhag Singh. There is sufficient material on record which would establish the presence of the petitioner on the spot whereby he along with co-accused after having liquor gave beatings to Gurbhag Singh resulting into his death.

In the light of the above facts and circumstances, this Court finds no infirmity or illegality in the impugned order dated 27.08.2015. The present revision petition is dismissed.

17.05.2017

sumit.k

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No