

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

CRR No.38 of 2017

Date of Decision: 05.05.2017

Deepak and another	Petitioners
Versus	
State of Haryana and another	... Respondents

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

Present:Mr. K.S. Dadwal, Advocate
for the petitioners.

Mr. P.P. Chahar, DAG, Haryana.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 07.12.2016 passed by the Additional Sessions Judge, Karnal whereby the application under Section 319 Cr.P.C was allowed and the petitioners were ordered to be summoned as additional accused to face trial for the commission of offences under Sections 306/34 IPC.

[2]. FIR No.680 dated 16.09.2015 was registered under Sections 306, 148, 149 IPC in Police Station Sadar, Karnal on the allegations that on 13.09.2015 at about 9:30 PM, Jasmer son of Data Ram, Deepak, Rajesh, Mukesh Kumar and Rajiv gave beating to Ram Karan younger brother of the complainant on the pretext of panchayat election in the village. At that time, Ramesh and brother of the complainant namely Ram Kumar pacified them. After about half an hour, the accused came duly armed with lathi, danda and axe to the house of the complainant

and exhorted that Ram Karan be taken out and he will be done to death because of his non-cooperation in the panchayat election. It was also exhorted that if Ram Karan is having any remorse, then he should die by hanging himself or by consuming some poison. Complainant, wife of Ram Karan namely Babita and Rohtash were present at that time. The accused party was pacified by the complainant and others and was sent back. Despite that the accused kept on roaming around the house of the complainant due to which Ram Karan consumed some poisonous substance on 14.09.2015 at about 4 AM. The said fact was disclosed to the family by the wife of Ram Karan namely Babita. Ram Karan was admitted in the hospital, but during treatment, he died. It was alleged that Ram Karan has committed suicide being fed up from Jasmer, Deepak, Rajesh, Mukesh Kumar and Rajiv from their taunting. Complainant Baljit Singh lodged the aforesaid FIR on 16.09.2015 with these allegations.

[3]. Statements of Ram Kumar, Babita wife of Ram Karan (deceased), Baby wife of Ram Kumar, Rohtash, Ramesh, Jai Singh and Angrez Singh under Section 161 Cr.P.C were recorded on 16.09.2015 itself. During course of investigation, petitioners were found innocent and challan was submitted against Jasmer, Mukesh and Rajiv.

[4]. In due course, charges were framed. Complainant Baljit Singh appeared as PW 2 and submitted on Oath that on 13.09.2015 at about 8:30 PM, Jasmer, Deepak, Rajesh, Mukesh and Rajiv convened a meeting in respect of panchayat election. At that time, complainant and his brother were present at the house. Ram Karan was called on telephone. On advise of the complainant, Ram Karan went to attend the meeting. Jasmer was candidate for the post of Panch. Due to party faction, Jamser and his associates started abusing and giving beatings to Ram Karan. Ramesh, Suresh and Mohan separated them. On receipt of information, complainant went to the spot. In the midway, the accused were found armed with deadly weapons and they met the complainant. Jasmer was armed with lathi, Rajiv was armed with iron axe, Mukesh, Deepak and Rajesh were armed with dandas. They caught hold Ram Karan and gave beatings to him. Complainant, his brother Ram Kumar, Ramesh, Suresh and Rohtash tried to save Ram Karan from the accused and Ram Karan was brought to the house. Thereafter, all the accused came to the house of the complainant in drunken condition and asked the complainant party to handover Ram Karan to them as they wanted to teach him a lesson. On persuasion, they left the place and went to their house. At about 10:30 PM, all the accused came in front of

the house of the complainant and stated that Ram Karan be brought out and they will kill him. They also exhorted that if Ram Karan has some self respect, then he should hang himself or consume poison. At about 4 AM, Ram Karan consumed some poisonous substance and his wife Babita made a noise. On hearing alarm, the complainant and his wife rushed to the spot. The neighbour Ramesh also rushed there. On being asked, Ram Karan told them that accused had exploited him and threatened him to kill in future. Due to inhuman behaviour, Ram Karan consumed poisonous substance. He made all the accused responsible for such condition. Ram Karan was taken to hospital, where he died on 16.09.2015. After getting the aforesaid statement recorded by the complainant as PW 2, an application under Section 319 Cr.P.C was moved for summoning of the petitioners as additional accused to face trial. The examination-in-chief of the complainant Baljit Singh was recorded on 04.04.2016 and his cross examination was completed on 29.07.2016.

[5]. Additional Sessions Judge, Karnal after considering the material on record, dismissed the application vide order dated 29.04.2016 by observing that on perusal of the record, no case is made out to invoke the provision under Section 319 Cr.P.C. The application was dismissed, however, anything said

in the order was not to be misconstrued as an opinion on the merits of the case.

[6]. Thereafter, the aforesaid order dated 29.04.2016 was assailed before this Court in CRR No.1975 2016 titled Baljit Singh Vs. State of Haryana and others. The said revision petition was allowed to be dismissed as withdrawn with a liberty to file fresh application under Section 319 Cr.P.C on the basis of additional material on record. The revision petition was disposed of as withdrawn with aforesaid liberty vide order dated 03.10.2016.

[7]. The additional material was claimed to be the statements of Ram Kumar (PW 5) and Babita (PW 6) whose statements were recorded on 29.07.2016 before the Additional Sessions Judge, Karnal. In the aforesaid statements of PW 5 and PW 6, no incriminating material could come, except an improvement from their version recorded by the police under Section 161 Cr.P.C on 16.09.2015.

[8]. Learned counsel for the petitioners submitted that perusal of statements of PW 5 and PW 6 would not provide any such material of more than *prima facie* in nature so as to record greater degree of satisfaction required under Section 319 Cr.P.C for summoning the accused/petitioners at this stage. Once the statements of these very witnesses under Section 161

Cr.P.C and the statement of fact made by the complainant in the FIR were not considered *prima facie* by the police and even by the Court at the time of rejection of first application under Section 319 Cr.P.C. The statements as of now made by these witnesses would not satisfy the ingredients of **Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623.**

[9]. Learned counsel further submitted that the wife of Ram Karan (deceased) soon after his death contracted marriage with Ram Kumar within six months of death of Ram Karan. Suicide by Ram Karan cannot be treated to be on account of alleged incident as projected by the complainant party, rather it has necessary connectivity in the family affairs, where Ram Karan (deceased) was not blessed with any issue. The Court can read between the lines as to the reason for committing the suicide by Ram Karan, particularly in the fact that his widow soon after his death contracted Krava with Ram Kumar.

[10]. Notice of motion was issued on 06.02.2017. As per office report, respondent No.2 was duly served through wife, but he did not prefer to contest the case.

[11]. In **Hardeep Singh's case (supra)**, power under Section 319 Cr.P.C has been held to be discretionary and extraordinary in nature. These powers are to be exercised sparingly and only in those cases where the circumstances of

the case so warrant. These powers are not to be exercised simply because the Court is of the opinion that some other persons may also be guilty of committing that offence. These powers should be exercised only where strong and cogent evidence comes on record against the person which should be more than *prima facie* in nature as required for framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction of the accused. In the absence of such satisfaction, the Court should refrain from exercising the powers under Section 319 Cr.P.C.

[12]. The Hon'ble Apex Court summed up the conclusions and scope arising out of Section 319 Cr.P.C in concluding part of the judgment in **Hardeep Singh's case (supra)** :-

“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.”

[13]. 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.”

[14]. The powers of 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 **2014(5) SCC 568, Babubhai Bhimabhai Bokhiria and anothers v. State of Gujarat and others.** 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.”

[15]. If the aforesaid yardstick is applied to the facts of the case, then it will be found that on the basis of material collected by the police, firstly, the petitioners were found to be innocent in the report under Section 173 Cr.P.C. Secondly, on the basis of statement of the complainant and the material collected by the police including statements of PW 5 and PW 6 and the statements recorded under Section 161 Cr.P.C, the first application under Section 319 Cr.P.C was rejected by the Additional Sessions Judge vide order dated 29.04.2016. In CRR No.1975 of 2016, liberty was given to respondent No.2 that fresh application under Section 319 Cr.P.C can be filed only on the basis of additional material came on record. The evidence in the form of statements of Ram Kumar and Babita as PW 5 and PW 6 have been claimed to be an additional material for pressing the application under Section 319 Cr.P.C.

[16]. The perusal of the aforesaid statements of PW 5 and PW 6 in my considered opinion, would not give rise to any such more than *prima facie* material which will create reasonable prospectus of conviction of the petitioners or would provide material to form higher degree of satisfaction, than the *prima facie* case required for summoning the accused persons. There cannot be any such degree of satisfaction recorded on the basis

of testimonies of PW 5 and PW 6 in the given set of circumstances. Ingredients of offence under Section 306 IPC have to be considered in the light of concerted efforts made by the accused in abating the commission of offence to the hilt. No such reasonable proceedings of ultimate conviction of the petitioners can be even interfered in view of offence under Section 306 IPC for which the statements of PW 5 and PW 6 have been pressed into service to project a case of more than *prima facie* in nature for recording much higher degree of satisfaction for summoning the petitioners.

[17]. In view of above, I am of the view that the impugned order dated 07.12.2016 passed by the Additional Sessions Judge, Karnal does not satisfy the ratio laid down in **Hardeep Singh's case (supra)** and **Babubhai Bhimabhai Bokhiria and another's case (supra)** and the same needs to be quashed while exercising revisional jurisdiction of this Court under Section 401 Cr.P.C.

[18]. In view of aforesaid, this criminal revision is accepted. Impugned order 07.12.2016 passed by the Additional Sessions Judge, Karnal is hereby quashed.

(RAJ MOHAN SINGH)
JUDGE

05.05.2017
prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No