

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

**CRM-M No.38997 of 2017
Decided on: 18.07.2018**

Kavi Raj

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Chirag Wadhwa, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. J.P. Sharma, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting-aside the order dated 01.08.2017 (Annexure P5) passed by the Revisional Court vide which, the order dated 02.05.2017 (Annexure P4) passed by the trial Court allowing the application under Section 319 of the Code of Criminal Procedure (in short 'Cr.P.C.'), summoning respondent No.2 as an additional accused, was set-aside.

Brief facts of the case are that on 21.01.2014, the petitioner/complainant was present at his house and was getting the construction work done when Rajbir Ex. MC, his two sons namely Jasbir and Pankaj along with Narinder Master (respondent No.2) and one Bhag Singh @ Rakesh M.C., came in two vehicles along with 7-9 persons. All of them were armed with weapons. 02 of them were

carrying revolvers and rest were carrying baseball bat, gandasi and swords. The accused persons started abusing the petitioner and gave beatings to him. On the basis of the complaint given by the petitioner, the FIR No.59 dated 21.01.2014 was registered under Sections 148, 149, 323, 324, 506 of the Indian Penal Code (in short 'IPC'), 25/54/59 of the Arms Act and 3(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (in short 'the SC & ST Act') at Police Station Karnal Sadar, District Karnal.

During the investigation, the Investigating Officer found Rajbir Ex. MC, Pankaj, Narinder Master (respondent No.2) and Bhag Singh as innocent and also deleted Section 3(v) of the SC & ST Act and submitted the challan before the trial Court.

Thereafter, charges were framed against 03 persons namely Jasbir, Naveen Kumar and Amarjeet @ Kala under Sections 323, 324, 326, 34 and 506 IPC.

The prosecution led its evidence and the petitioner was examined as PW6. As per the statement of the petitioner, in examination-in-chief dated 06.03.2017 (Annexure P2), the petitioner reiterated the version given by him in his statement recorded under Section 161 Cr.P.C. and stated that respondent No.2 – Narinder Master was also present at the spot, however, no overt act was attributed to him. In the examination-in-chief, even no motive was attributed towards respondent No.2.

Thereafter, the petitioner's counsel moved an application under Section 319 Cr.P.C. for summoning the remaining co-accused i.e. Rajbir, Pankaj, Bhag Singh @ Rakesh and respondent No.2 – Narinder

Master as additional accused, in the present case.

In the application (Annexure P3), the petitioner has stated that all the accused persons, have caused injuries to the petitioner and the Investigating Officer has wrongly declared them innocent and deleted their names. However, in this application, again no overt act was attributed towards respondent No.2 – Narinder Master.

The trial Court vide its order dated 02.05.2017 (Annexure P4) allowed the application and accused persons namely Rajbir Ex. MC, Pankaj, Bhag Singh @ Rakesh as well as respondent No.2 – Narinder Master, were summoned as an additional accused.

Thereafter, respondent No.2 preferred a revision before the Additional Sessions Judge, which was allowed vide impugned order dated 01.08.2017 (Annexure P5). The present petition has been filed challenging the said order.

Counsel for the petitioner has submitted that the trial Court has passed a well-reasoned order, summoning respondent No.2 and, therefore, there was no occasion for the Revisional Court to exercise its jurisdiction for setting-aside the summoning order passed by the trial Court qua respondent No.2. It is further submitted that the other 03 accused persons have not filed any revision petition and they are facing the trial and only respondent No.2 has preferred the revision petition whichw as allowed by the Revisional Court.

Counsel for the petitioner has further submitted that the statement of the complainant is duly supported by the MLR of the complainant and thus, there is a corroboration in the version of the complainant and, therefore, the Revisional Court was not justified in

setting-aside the summoning order passed by the trial Court. It is also submitted that the observation given by the Revisional Court that respondent No.2, on the date and time of the incident was shown to be present in the school premises where he is working as a Guest Teacher and, therefore, his presence at the spot is not proved, is a matter of evidence and the Revisional Court has wrongly believed this version.

Counsel for the petitioner has relied upon the judgment “Rakhi Mishra vs State of Bihar and others”, 2017(4) RCR (Criminal) 52, to submit that at the stage of summoning of a person as an additional accused, the Magistrate is not required to consider the defence version or material arguments.

In reply, counsel for the State as well as counsel for respondent No.2 has submitted that the statement of the petitioner/complainant as PW6, is nothing but reiteration of the version given by him before the Police under section 161 Cr.P.C. and further submitted that no fresh/cogent evidence has come on record on the basis of which, the trial Court has summoned the petitioner.

Counsel for respondent No.2 has relied upon the judgment “***Hardeep Singh vs State of Punjab and others***” and other connected cases, 2014(1) RCR (Criminal) 623, wherein the Hon'ble Supreme Court has held that while allowing the application under Section 319 Cr.P.C., the Court must record a finding that the evidence which has come on record is not mere re-recording of the statement made before the police under Section 161 Cr.P.C., but some cogent and reliable evidence should come on record. The operative part of the judgment in ***Hardeep Singh'case (supra)*** is reproduced below:-

“110. We accordingly sum up our conclusions as follows :

Question Nos. 1 & 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.”

Counsel for respondent No.2 has further submitted that the trial Court while summoning all the 04 accused persons has not properly appreciated and scrutinized the allegation against each of them individually. It is further submitted that a perusal of the FIR as well as the statement of PW6, which are in verbatim the same, show that the petitioner has alleged that on 21.01.2014, respondent No.2 along with

others came at the spot and thereafter, Jasbir gave a gandasi blow on his forehead, when he tried to save himself the same struck on his forehead. Thereafter, Pankaj hit his sword on his head and when he tried to save himself, it hit on his left hand. Rajbir, thereafter, took the gandasi and gave a blow on his forehead and when he tried to save himself, it hit on his right hand and thereafter, Bhag Singh raised lalkara to teach a lesson to the complainant in the name of his caste and exerted that he should not be left and, thereafter, all the accused persons gave him stick blows and punches. Suresh and Raj Kumar, who had seen the incident started shouting for help and thereafter, people gathered there and saved him.

Counsel for respondent No.2 has, thus, submitted that in the FIR/statement as PW6, though the petitioner has specifically named 04 persons, who have caused injuries to him, however, no overt act was attributed to respondent No.2. It is further submitted that the complainant has also not attributed any motive towards the petitioner and, therefore, the Revisional Court has rightly held that there was no other material on record to show that the trial Court was justified in summoning the petitioner.

Counsel for respondent No.2 has also submitted that in the enquiry, the Deputy Superintendent of Police has exonerated respondent No.2 and it was also found that there is a matrimonial litigation between the petitioner and his wife and the complainant is pressurizing the accused persons to get a decree of divorce and thus, the Deputy Superintendent of Police after conducting a proper enquiry has exonerated respondent No.2.

After hearing counsel for the parties, I find no merit in the present petition for the following reasons:-

(a) Though a perusal of the FIR and the statement of PW6 show the presence of respondent No.2, however, no injury is attributed to him and even no motive is attributed towards respondent No.2 for causing any such injury, therefore, the statement of the petitioner as PW6 being the reiteration of the version given in the FIR in view of the judgment of the Hon'ble Supreme Court in Hardeep Singh's case (supra), no fresh evidence has come on record to summon respondent No.2.

(b) It has come in the enquiry report of the Deputy Superintendent of Police that respondent No.2 was not present at the spot and as he was present in the school, which was situated at a distance of 20-25 Kms. away from the place of occurrence, as a Guest Teacher where he is serving and there is a matrimonial litigation between the parties and the petitioner has filed a divorce petition against his wife and the motive is for pressurizing the accused persons to seek a decree of divorce.

*(c) In view of the judgment of the Hon'ble Supreme Court "**Brijendra Singh vs State of Rajasthan and others**", 2017(3) RCR (Criminal) 374, wherein the Hon'ble Supreme Court while deciding the issue regarding summoning of an additional accused under Section 319 Cr.P.C. has held that the report of the Investigating Officer finding that an accused person was not present at the spot can be considered while deciding the application under Section 319 Cr.P.C., the Revisional Court has rightly held that respondent No.2 was present in government school at a far distance.*

(d) From a perusal of the FIR and the statement, it is apparent that neither any specific injury nor any role is attributed towards respondent No.2 and, therefore, the

ingredients of invoking Section 319 Cr.P.C., are not fulfilled.

(e) A perusal of the trial Court order also show that the allegation against all the 04 persons, who were summoned including the petitioner were not scrutinized separately and all the 04 accused persons were summoned on the premise that there is a strong and cogent evidence against all of them for summoning as an additional accused, therefore, the Revisional Court has rightly held that there is no cogent evidence against respondent No.2 for summoning him, under Section 319 Cr.P.C.

For the reasons stated hereinbefore, finding no merit, the petition fails and is accordingly dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

18.07.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No