

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Revision No. 253 of 2015 (O&M)
Date of Decision: 26.9.2018**

Balbir Chand

.....Petitioner

Versus

State of Punjab

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sarju Puri, Advocate
for the petitioner.

Ms. Jaspreet Kaur, AAG, Punjab.

Mr. P.S.Miglani, Advocate
for respondent No. 2.

ANITA CHAUDHRY, J

This revision is directed against the order passed by the Additional Sessions Judge on 25.11.2014 vide which an additional accused was summoned to face trial in FIR No. 72 dated 3.9.2013 registered under Section 306 IPC at Police Station Sadar Banga, SBS Nagar.

It is necessary to first give the facts. Mohan Lal had got a case registered with the police on 3.9.2013. His daughter Raveena aged 23 years got married to Mandeep Kumar against his wishes in April 2013. Mandeep was staying just across the street. The complainant disclosed that after the marriage, the couple remained outside the village for about two months but they returned in June and the couple started living in the house under police protection and after sometime police protection was withdrawn. The complainant stated that he and his family did not have any ill towards

daughter or her husband or the in-laws and they had accepted the marriage silently. The allegations are that the in-laws house was opposite to his house and his residence was on the second floor and everything was visible. One month earlier, he heard quarrels which became frequent and Mandeep Kumar and his parents used to speak ill of his daughter that she was not well versed in household work and because of her, there was enmity in the village. It was further stated that the marriage had taken place at the instance of the uncle namely Balbir Chand. The allegations further were that Balbir Chand came to the house of his daughter. At that point the complainant was standing in the balcony and had seen him. Balbir Chand told his daughter that he had got the marriage performed and that had brought disrepute to her father and now she will be thrown out of the house. The allegations further were that Raveena had told the complainant's wife that Mandeep did not like her and had feigned an affair and performed marriage and she had returned to village only on compulsion. The complainant came to know that his daughter had died and she had committed suicide. The allegations were that she had committed suicide on account of harassment at the hands of the in-laws including the sister-in-law, father-in-law and uncle Balbir Chand.

It is necessary to mention that the couple had approached the High Court for protection which was granted vide Annexure P-5. In July 2013, the couple had returned to settle in the village. After the death of the girl, the police inquired into the complaint and challaned the husband, mother-in-law and father-in-law. The inquiry report (Annexure P-6) was made part of the challan. The trial commenced. Charge was framed and the complainant examined himself. Thereafter an application was moved under

Section 319 Cr.P.C. which has been allowed and Balbir Chand and Manjit Kaur were summoned to face the trial.

I have heard the counsel for the both sides.

Counsel for the petitioner contends that petitioner is a distantly related uncle of the brotherhood and he has been summoned to face trial though an inquiry was conducted by the police but it found no role and challan was not presented against him. It was urged that the trial Court has only referred to the statement given by the complainant and without any discussion in one line had observed that there was sufficient *prima facie* case to proceed against Balbir Chand and it had ignored the inquiry report and had not recorded its satisfaction and at the stage of summoning the additional accused under Section 319 Cr.P.C., there has to be evidence which is much more than *prima facie* and the Court is required to record its satisfaction as held in ***Hardeep Singh versus State of Punjab and others*** **2014(3) SCC 92.**

In ***Hardeep Singh's*** case (supra) the Apex Court dealt with the moot question i.e. the degree of satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and the Constitution Bench had answered the same in the following manner:-

*“95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in *Vikas v. State of Rajasthan*[(2014) 3 SCC 321], held that on the objective satisfaction of the court a person may be “arrested” or “summoned”, as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for*

which such person could be tried together with the already arraigned accused persons.

xx xx xx

105. Power under Section 319 CrPC is a discretionary and an extraordinary 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.

106. 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 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused.”

In Hardeep Singh’s case (supra), the Constitution Bench has also settled the controversy on the issue as to whether the word ‘evidence’ used in Section 319(1) Cr.P.C. is in a comprehensive sense and indicates the evidence collected during investigation or the word ‘evidence’ is limited to

the evidence recorded during trial. It was held that it is that material, after cognizance is taken by the Court, that is available to it while making an inquiry into or trying an offence, which the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court. The word 'evidence' has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. It means that the power to proceed against any person after summoning him can be exercised on the basis of any such material as brought forth before it. At the same time, the Court cautioned that the duty and obligation of the Court becomes more onerous to invoke such powers consciously on such material after evidence has been led during trial. The Court also clarified that 'evidence' under Section 319 Cr.P.C. could even be examination-in-chief and the Court is not required to wait till such evidence is tested on cross-examination, as it is the satisfaction of the Court which can be gathered from the reasons recorded by the Court in respect of complicity of some other person(s) not facing trial in the offence.

No doubt the Court has the power to summon additional accused but the power under Section 319 Cr.P.C. is an extraordinary power and has to be exercised sparingly where the circumstances of the case so warrant.

At the time of taking cognizance, the Court has to see whether a *prima facie* case is made out to proceed against the accused but at the stage of summoning an additional accused under Section 319 Cr.P.C. though the test of *prima facie* case is the same but the degree of satisfaction that is required is much stricter and it has to be more than *prima facie*.

In the present case, the complainant had made a verbatim

statement as that was given in the FIR. The police had investigated the case and did not find any role. The inquiry report was considered and the petitioner was not challaned. It came in the investigation that Balbir Chand was not interfering in the life of the girl. They had also checked his call details. It doubted the statement of the complainant as some facts which he alleged had come to his notice but he did not bring it to the notice of the panchayat.

The trial Court merely reproduced the statement and without discussing or recording any reasons has summoned the petitioner. The police was unable to collect any material against the petitioner. Therefore, the complainant was required to bring some evidence to show his complicity. The complainant has failed to produce on record any other material which could warrant the summoning of the additional accused. The degree of satisfaction for summoning the additional accused has to be different and the trial Court has failed to record its satisfaction and gave no reasons to summon the additional accused.

The order is bereft of merit and is set aside. The FIR and the subsequent proceedings qua the petitioner are also set aside.

The petition is allowed.

**(ANITA CHAUDHRY)
JUDGE**

September 26, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No