

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

**CRR No.3912 of 2014 (O&M)
Decided on: 16.02.2018**

Yunus

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Aman P. Jain, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Sandeep Kotla, Advocate
for respondents No.2 to 8.

ARVIND SINGH SANGWAN, J.

Prayer in this revision petition is for setting-aside the order dated 16.07.2014 passed by the Additional Sessions Judge, Mewat vide which the second application filed by the petitioner under Section 319 of the Code of Criminal Procedure (in short 'Cr.P.C') for summoning the private respondents as additional accused was dismissed.

Brief facts of the case are that FIR No.101 dated 22.05.2012 under Sections 148, 149, 323, 325, 506 and 307 of the Indian Penal Code (in short 'IPC') at Police Station Nagina was registered against twelve persons. During investigation, the police found the respondents No.2 to 8 namely Juhurudeen, Rati, Amrudin, Mun Sarif, Jamshida, Sagiran and Khatuni, are innocent and submitted the challan against five persons namely Kamruddin, Aash Mohd.

Illiash, Samina and Ashma.

The petitioner, after framing of the charge, filed an application under Section 319 Cr.P.C. for summoning the respondents No.2 to 8 as additional accused. The said application was dismissed by the trial Court/Additional Sessions Judge vide order dated 13.09.2013 (Annexure P3). Thereafter, the petitioner filed Criminal Revision No.978 of 2014 before this Court, in which the following order was passed:-

“After arguing for some time, counsel for the petitioner seeks permission to withdraw the present petition.

Dismissed as withdrawn.

October 10, 2014

**(DAYA CHAUDHARY)
JUDGE”**

Thereafter, the petitioner filed second application (Annexure P4) for summoning the respondents No.2 to 7 with similar allegations as made in the earlier application. The trial Court, vide impugned order dated 16.07.2014 dismissed the application holding that since the earlier application was dismissed on 13.09.2013 and in the second application, the complainant did not even disclose about the dismissal of the first application vide order dated 13.09.2013. It was, thus, held that the second application under Section 319 Cr.P.C. is not maintainable.

Hence, the present revision petition has been filed challenging the aforesaid order.

At the very outset, counsel for the State has submitted that the main accused namely Kamruddin and others, after facing the full

length trial have been acquitted by the trial Court under Sections 149, 506, 307 IPC, however, were convicted for offence punishable under Sections 323 and 506 IPC vide judgment dated 10.08.2016 and released them on probation of good behaviour for a period of six months. Counsel for the State has, thus, submitted that even the probation period is already over, therefore, the present petition may be dismissed as the trial has already been concluded. A copy of the said judgment dated 10.08.2016 is taken on record as Mark 'X'.

Counsel for the petitioner, on the other hand, has submitted that inspite of the fact that the main accused persons have been acquitted, the right of the petitioner/complainant under Section 319 Cr.P.C. is still available as in case, the impugned order is set-aside, the respondents No.2 to 8 can be directed to face independent trial. Counsel for the petitioner has relied upon the judgment ***“Babubhai Bhimabhai Bokhiria and another vs State of Gujarat and others”***, 2013(9) SCC 500 and further submitted that from the statement of the complainant and injured persons recorded under Section 161 Cr.P.C. (copy attached as Annexure P2 (Colly.)), the role of respondents No.2 to 8 is duly assigned and, therefore, they are liable to be summoned under Section 319 Cr.P.C. It is further argued that there is no bar under Section 319 Cr.P.C. to file the second application as the revision petition filed before this Court, challenging the earlier order dated 13.09.2013 was simply withdrawn and it was not adjudicated upon merits by this Court. Counsel for the petitioner has, thus, submitted that the impugned order be set-aside and the application under Section 319 Cr.P.C. be allowed and the matter may be remanded back for conducting an independent

trial qua respondents No.2 to 8.

Counsel for respondents No.2 to 8 has submitted that, in fact, it was a case of version and cross-version and in the cross-version, the petitioner/complainant Yunus was one of accused in the same FIR No.101 dated 22.05.2012 registered under Sections 148, 149, 323 and 325 IPC along with four other accused persons namely Yusuf, Harun, Safi Mohd. and Hasan Mohd. It is further submitted that even in that FIR, 17 persons were nominated as accused persons and the police while submitting the challan found other innocent and the petitioner – Yunus along with 04 other accused, faced the trial. It is also submitted that the trial of both version and cross-version were tried together by the same Judge and vide judgment dated 10.08.2016, both the cases were decided together while the accused who faced the trial namely Kamruddin and others were convicted under Sections 323 and 506 IPC and were released on probation for a period of six months, which has already expired, the petitioner and four other accused, in the cross-version were also convicted for the offence punishable under Section 323 IPC and they were also released on probation on furnishing personal bonds in the sum of Rs.50,000/- to maintain peace and good behaviour and this period has also expired and no untoward incident has taken place (copy of the judgment dated 10.08.2016 is taken on record as Mark 'Y').

Counsel for the respondents No.2 to 8 has further submitted that while withdrawing the Criminal Revision No.978 of 2014, no permission was granted by this Court to file a fresh application and, therefore, the trial Court held that the second

application is not maintainable. It is further submitted that even on merits of the case, the petitioner is seeking summoning of respondents No.2 to 8 on the basis of the statement recorded under Section 161 Cr.P.C. Counsel for respondents No.2 to 8 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's 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.”

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

1. The first application filed by the petitioner was dismissed vide detailed order passed by the trial Court on 13.09.2013. The CRR No.978 of 2014 filed by the petitioner was dismissed as withdrawn without seeking any permission to file a fresh application before the trial Court.

2. No fresh ground have been made by the petitioner in the second application except that the same version given in the FIR or the statement recorded under Section 161 Cr.P.C.was reiterated while deposing in Court.

*3. In view of **Hardeep Singh's case (supra)**, the trial Court has rightly held that the evidence on record is not worth summoning the respondents No.2 to 8.*

4. Admittedly, it is a case of version and cross-version and on both the sides number of accused persons were nominated, however, the police, on investigation submitted the challan against five persons each in both the cases and after a full length trial, the trial Court convicted them under Section 323 and 506 IPC and later on, released them on probation, therefore, in the absence of any cogent and reliable evidence, there is no justification in allowing the present revision petition.

5. *There is no dispute about the judgment in Babubhai Bhimabhai Bokhiria's case (supra) wherein the Hon'ble Supreme Court has held that even in case of conclusion of a trial against co-accused, independent trial against other persons who could have been tried jointly under Section 319 Cr.P.C. is not barred. However, for the reasons stated above, there is no explanation for filing second application by concealing the filing and dismissal of first application. Moreover, even on merits, I find that the petitioner has failed to adduce evidence which satisfies the requirement under Section 319 Cr.P.C.*

In view of the finding recorded above, the petitioner has miserably failed to show any evidence to summon the respondents No.2 to 8. Since, the trial of both the version and cross-version has already been concluded vide separate judgments dated 10.08.2016 and also in view of the fact that the first application filed by the petitioner under Section 319 Cr.P.C. was dismissed during pendency of the trial, I find no ground to interfere in the impugned order passed by the trial Court.

In view of what has been discussed hereinabove, finding no merit, the revision petition fails and is accordingly dismissed.

16.02.2018
yakub

(ARVIND SINGH SANGWAN)
JUDGE

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