

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

**CRR No. 3074 of 2016 (O&M)
Date of Decision: January 23, 2018**

Ishwar

..Petitioner(s)

Versus

State of Haryana and others

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sushil Sheoran, Advocate
for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

Mr. Subhash Godara, Advocate
for respondent nos.2 to 4.

ANITA CHAUDHRY, J.

The petitioner/complainant has filed this petition challenging the order passed on the application filed under Section 319 Cr.P.C.

The complainant disclosed to the police that his daughter Kamlesh was married to Man Singh for over 10 years and Man Singh used to ask his nephew Vikas to return the sum of Rs.45,000/- lent to her. The relations between them got strained as Vikas was not returning the amount. Altercations used to often take place. The allegations are that Sheokaran, Rajpal alongwith other family members namely Sattu, Kitabo and Vikas forcibly administered insecticide to Kamlesh on 13.09.2015 at 1:30 PM, after she had been beaten up. The allegations

were that when Kamlesh raised alarm, the persons named in the complaint fled away. Man Singh informed the complainant who came and shifted his daughter to PHC, Behal for treatment and then shifted to Sarvodya Hospital, Hisar. The police filed the challan only against Sheokaran and Rajbala. The complainant moved an application under Section 319 Cr.P.C. for summoning the remaining accused as additional accused to stand trial with Sheokaran and Rajbala. That application was dismissed by the trial Court. Aggrieved with the order, the petitioner has filed this petition.

Today the copy of the application filed under Section 319 Cr.P.C. has been filed.

Counsel for the petitioner contends that the complainant had appeared as PW-4 and had made a statement naming the other accused and it was clearly established that the main dispute was with Vikas who had been wrongly declared innocent and specific role had been given to Vikas, Sattu & Kitabo and Man Singh who was an eyewitness had made a similar statement under Section 161 Cr.P.C. but the Court has ignored the statements recorded under Section 161 Cr.P.C.

The submission on behalf of the private respondents is that the trial Court had exhaustively gone through the evidence and the statements recorded by the police and had noted the contradiction that insecticides were forcibly administered to the deceased and a role was assigned to each one of the accused but Ishwar was not present on the

spot. It was urged that Man Singh, husband of the deceased was stated to be present at the time of the occurrence but he had not been examined and if his statement under Section 161 Cr.P.C. is seen then a different story appears which led the trial Court to record its reasons.

The power to summon additional accused is found in Section 319 Cr.P.C. and the Court can proceed even against those persons who are not arraigned as accused and it cannot be disputed. The Constitution Bench in *Hardeep Singh Vs. State of Punjab 2014(3) SCC 92* explained the purpose behind the provisions and it also settled the controversy on the issue whether the word 'evidence' used in Section 319 Cr.P.C. indicates the evidence collected during investigation or the word was limited to the evidence recorded during trial. It 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.

The important question that would arise is what is the degree of satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and the related question would be under what situations the power should be exercised in respect of a person named in the FIR but not challaned. These two aspects were detailed by the Constitution Bench in **Hardeep Singh's** case (supra) and answered 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.”

The power under Section 319 Cr.P.C. can be exercised at any stage and there is no doubt about it and the evidence means the material that is brought before the Court during trial. In so far as the material collected by the Investigating Officer at the stage of inquiry is concerned, it can be utilized for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. but the power under Section 319 Cr.P.C. is an extraordinary one and has to be exercised sparingly where the circumstances of the case so warrant.

The counsel for the petitioner had referred to the statement made by Man Singh. The version given there is that the

deceased herself had consumed poison. From the record it appears that it is Man Singh who had informed Ishwar about the incident and Ishwar in his complaint to the police had stated that the poison was forcibly administered to Kamlesh.

The complainant had named a number of persons in the FIR. The police had carried out the investigation and on the basis of investigation, they found that none of the other accused were involved. Two of the accused were living in different villages. The incident had taken place in middle of the afternoon at the Well. The police on the basis of the investigation found that all the persons named were not involved. The trial Court also noted the contradictory stand of the complainant and that the husband was present at the time of the occurrence. The trial Court had rightly found that it was not a fit case to summon the additional accused. The complainant had failed to produce any extraordinary evidence to show the complicity of the remaining accused. There is no merit in the petition and is dismissed.

(ANITA CHAUDHRY)
JUDGE

January 23, 2018
Sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No