

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

**CRR No. 2627 of 2017 (O&M)
Date of Decision: January 17, 2018**

Raj Kumar and others

..Petitioner(s)

Versus

State of Punjab and another

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

Mr. Rajbirinder Singh Chahal, Addl. AG, Punjab.

ANITA CHAUDHRY, J.

Delay condoned.

This revision is directed against the order dated 12.04.2017, passed by the Additional Sessions Judge, Patiala who allowed the application filed under Section 319 Cr.P.C. and summoned the additional accused who are nine in number to face trial along with Nanak Ram.

The factual details pertaining to the FIR are as under:-

A complaint was given by the father of the victim. He made a statement to the police on 25.07.2016 that his daughter who was 14½ years old had left the house at 5:00 AM on 19.07.2016 without informing anyone and had not returned. The complainant had also disclosed that he alongwith his wife and two daughters had gone to Palwal for sowing the fields and he had left behind both his sons and

the victim with his father and he had received a call from his father at about 7:00 AM informing him about his daughter and they had been looking for their daughter. He also disclosed that the house of maternal uncle of Nanak Ram adjoined their house and Nanak Ram used to visit their house and he was also missing. The complainant named the parents of Nanak Ram and his five other relatives.

The victim was recovered after a month. Her statement Annexure P-2 was recorded by the police wherein she named Nanak Ram alone. She had stated that she was taken in by the promises made by Nanak Ram and accompanied him and they live together as husband and wife and after staying for 2 – 3 days they both came to Patran and since they were left with no money, they were present at Bus Stand, Patran and were to board a bus for Shutrana when the police met them.

The prosecutrix was produced before the Magistrate for her statement under Section 164 Cr.P.C. next day and there she gave the names of 6 – 7 persons alongwith Nanak Ram. She stated that her younger sister was sleeping with her and Parveen, Pardeep, Milkhi and Sandeep scaled the wall of their house on 21.07.2016 at 10:00 PM and they were armed with a knife and under threat she was taken out of the house. She stated that her younger sister was threatened and that is why the door was opened and she saw Nimmo, Goldy and Poonam were standing outside the gate and Nanak Ram was standing with them and those persons threatened Nanak Ram and she was taken away by Milkhi, Pardeep, Sandeep, Parveen and Nanak Ram to Dera Bassi on

two motorcycles while the three ladies left for home. She stated that no wrong act was committed with her nor anyone gave her false promise of marriage and it was only four persons namely Milkhi, Pardeep, Parveen and Sandeep who forced her and Nanak Ram to leave home.

The victim made another statement before the DSP on 19.09.2016 where she again changed her statement and stated that she was sleeping in her house on 19.07.2016 and her parents were not at home and only the grand-parents were present and 8 unknown persons/ladies abducted her by administering some sedative and she regained consciousness after two days and came to know that she had been brought to Dera Bassi. She also found Nanak Ram with her. She had disclosed that she was known to him as his maternal uncle lived in their village. She stated that the relatives of Nanak Ram namely Raj Kumar, Asha Rani, Milkhi, Reenu, Nimmo and Poonam used to beat her.

The police filed the challan only against Nanak Ram under Section 363, 366, 376 IPC and Section 4 of the POCSO Act and the trial had commenced.

At the trial the victim made her statement (Annexure P-6) and stated that her parents were away to Palwal and she was sleeping in the house alongwith her sister and her younger sister opened the door and Milkhi, Pardeep, Poonam, Goldy and Nimmo entered her house and she was gagged by Milkhi and she accompanied them as she was threatened and a knife was pointed at her. She stated that when she

stepped out of her house she found Nanaku standing outside and Milkhi gave her hand in the hand of Nanak Ram who was drunk and the ladies returned to their respective houses whereas the men took her on the motorcycle towards Dera Bassi where she was made to wear a 'Mangalsutra' forcibly and she stayed in the house for 2 – 3 days but they were in separate rooms and she returned home after 2 – 3 days. Since the prosecutrix did not support the prosecution version, she was turned hostile and in the cross-examination she admitted to all the questions put by the Public Prosecutor.

The prosecution had also examined the complainant and thereafter, an application under Section 319 Cr.P.C. was filed for summoning the parents of Nanku, the maternal uncles and their children as additional accused. The trial Court allowed the application and summoned the additional accused. The trial Court referred to the judgment rendered in Hardeep Singh Vs. State of Punjab, 2014(2) SCC (Crl.) 86 and held that the victim and her father have named the proposed accused and there were sufficient grounds to summon the additional accused.

The submission on behalf of the petitioners is that the prosecutrix had been changing her statement and in the first statement she had named only Nanak Ram and in the second statement she added seven more names and before the DSP she had given eight names and did not name Sandeep, Milkhi and Pardeep and in the Court she did not name Parveen, Raj Kumar and Asha and she had been changing her

statement. It was urged that the additional accused can be summoned if there is strong and cogent evidence appearing before the Court and the trial Court had acted in a casual manner and had summoned the petitioners. It was urged that the degree of satisfaction that is required is much stricter. It was urged that the victim's statement gets contradicted with the statement made by her father as the sister of the victim was away to Palwal but the victim had stated that the door was opened by her sister. It was urged that the father was away and his statement is hear-say and the Court should not have accepted his statement nor summoned the additional accused and the order of the trial Judge should be set aside. Reliance was placed upon ***Brijendra Singh Vs. State of Rajasthan*** 2017(2) *Law Herald* (SC) 903.

The State counsel supported the order passed by the Court below and urged that though the victim had made a statement under Section 161 & 164 Cr.P.C., which are vacillating but at the trial she had named all those persons who were involved and there were *prima facie* grounds to summon the accused.

A perusal of the statement (Annexure P-2) made under Section 161 Cr.P.C, statement (Annexure P-3) made under Section 164 Cr.P.C. and the third statement made to the DSP would show how the victim has been changing her statement and naming different persons at different stages. Considering the inconsistencies, the police came to the conclusion that only Nanak Ram was involved and the involvement of the rest of the people could not be shown. The police after

investigation prepared the final report and filed the challan only against one person while the names of the rest were shown in Column No. 2. It came to the conclusion that the additional persons named were not involved. The trial Court framed the charge against Nanak Ram and the trial had commenced thereafter the prosecution had filed an application under Section 319 Cr.P.C., which had been allowed.

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. A 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.

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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 unrebutted, 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. If we examine the statement made by the victim we find that she had been changing her stand each time her statement was recorded. If we consider the principles and apply to the facts of the present case, it appears that the trial Court acted in a casual manner in passing the summoning order. The parents were named in the FIR and investigation was carried out and on the basis of the investigation they found that none of the other accused were involved. The trial Court had gone through the statement of the complainant and the victim but failed to notice the vacillating stand taken by the victim. The trial Court was at least duty bound to look into the statements to form a prima facie opinion and see whether much stronger evidence than mere possibility of the petitioners' complicity had come on record. The trial Court merely reproduced the statement and referred to **Hardeep Singh's** case (supra) and concluded that it was a fit case to summon the additional accused without noticing the earlier statements which were part of the record. The prosecution had failed to produce any extraordinary evidence than what was collected by the Investigating Officer. The Order cannot stand judicial scrutiny. As a consequence, the revision is allowed. The order of summoning the additional accused is set aside.

(ANITA CHAUDHRY)
JUDGE

January 17, 2018
Sunil

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