

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

**CRR No. 3118 of 2017 (O&M)
Date of Decision: January 30, 2018**

Sarvjeet Kaur

..Petitioner(s)

Versus

State of Haryana and others

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. G.S. Sandhu, Advocate
for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

Mr. Parminder Singh, Advocate
for respondent nos.2 & 3.

ANITA CHAUDHRY, J.

This revision is directed against the order dated 10.08.2017, passed by the Additional Sessions Judge, Karnal who refused to summon the additional persons named by the complainant.

The factual details pertaining to the FIR are contained in para 2 of the order, according to which a complaint was given on 11.07.2016 to register a case against Punjab Singh and two other persons. The complainant had disclosed that her husband had died in 2008. The allegations were that Punjab Singh forcibly entered her house in 2012 and had ravished her. The allegations were that one month later Sahab Singh accompanied him and both of them committed rape. Two months later Punjab Singh brought Suba Singh who also

committed rape. A threat was given to kill her children. Allegations were made that Punjab Singh had ravished her and had obtained her signatures on blank papers and it was now revealed that on the basis of her signatures he had got her house registered in the name of his wife. The allegations were that all of them came on 10.07.2016 and physically assaulted her and took away her valuables.

The police registered FIR under Sections 323, 452, 376-D, 420, 506 IPC and under Section 25 of the Arms Act but filed the challan only against Punjab Singh. During investigation, it was revealed that Sahab Singh and Suba Singh had attended a Panchayat convened on 11.07.2016 to resolve the dispute between the complainant and Punjab Singh. Earlier also on 06.07.2016 the parties had arrived at a settlement and they had given affidavits but a complaint was given against Punjab Singh on 08.07.2016, therefore the settlement failed as the complainant had declared that she would not vacate the house.

Charge was framed against Punjab Singh. Thereafter, the prosecutrix made a statement and the complainant filed an application under Section 319 Cr.P.C. seeking to summon the other two persons named by her. The application was forwarded by the Public Prosecutor.

I have heard counsel of both the sides.

The submission on behalf of the petitioner is that the prosecutrix had named Punjab Singh and similar allegations were levelled against the other two persons but the police failed to challan them though their names figure in the statement recorded under Section

164 Cr.P.C. before the trial Court and the Court ignored the principles laid down in ***Hardeep Singh Vs. State of Punjab, 2014(2) SCC (Crl.) 86*** and there were sufficient grounds to summon the additional accused.

The counsel for the private respondents had urged that the complainant was a widow and she had married a person of another religion and had approached the High Court with a protection petition wherein she had arrayed Punjab Singh and Gurnam Singh and she had mentioned therein that there was a threat from them and had also mentioned that Punjab Singh was her brother-in-law. It was urged that settlement was effected and GPA was given to Punjab Singh which the complainant has now questioned and had filed a suit for declaration challenging the sale deed and the FIR had been registered with a sole purpose of pressurizing Punjab Singh. It was urged that she had named the other persons as they had attended the Panchayat and the FIR had been lodged four years after the alleged incident.

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 it was 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.

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 trial Court undoubtedly has the jurisdiction to add any person not being accused before it to face trial but only if the Court is satisfied that the persons who have not been arraigned as accused should face the trial. The trial Court can take a step to add such person as accused on the basis of evidence adduced before it. 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 trial Court had exhaustively dealt with the evidence which was adduced before it and doubted the version given by the complainant for the reasons disclosed therein. The police also could not collect any material which could point towards their complicity. The complaint was made after four years of the occurrence. There is no medical record to support the oral testimony of the petitioner. Considering the principles and applying the same to the present case, I find that the trial Court was justified in dismissing the application.

There was no evidence which hinted at even a mere possibility of the complicity of the other two persons.

I find no merit in the petition and is dismissed.

(ANITA CHAUDHRY)
JUDGE

January 30, 2018
Sunil

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