

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

**CRR-3161-2017 (O&M)
Date of decision: 02.07.2018**

Varinder Singh

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rajiv Malhotra, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

None for respondent No.2.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting aside the order dated 16.08.2017 passed by the Additional Sessions Judge, SAS Nagar (Mohali), vide which the application filed by the prosecution under Section 319 of the Code of Criminal Procedure (for short 'Cr.P.C.') for summoning the petitioner along with four other accused persons as additional accused, was allowed.

Despite service, none has appeared on behalf of respondent No.2.

Brief facts of the case are that present FIR No.193 dated 21.09.2016 under Sections 307, 341, 427, 34 of the Indian Penal Code (for short 'IPC') and Sections 25 & 27 of Arms Act, was registered at Police Station Dera

Bassi on the statement of Dalbir Singh @ Dherra son of Sukhdev Singh, resident of Village Mehmادpur, Tehsil Dera Bassi, District SAS Nagar with the allegations that on 21.09.2016, he was going in his car to meet a person in Village Gholu Majra and at about 1/1.30 PM, he was chased in Innova car by Diljot DJ, Sunil Gujjar, Bishu Pandit and one Arora, who were residents of Gulmohar City. Bishu Pandit came out of the Innova car and started firing towards him. It is further stated that there was one another unidentified person in a Figo car along with accused persons and they even damaged his car. After registration of the FIR, the police conducted the investigation and submitted the report under Section 173 Cr.P.C. on 14.12.2016 and till that time, the complainant never raised any finger towards the petitioner and even in the report under Section 173 Cr.P.C., the petitioner was neither named as an accused who participated in the crime nor was kept in column No.2.

Learned counsel for the petitioner submits that when the evidence in the case started, aforesaid Dalbir Singh appeared as PW1 and after narrating the entire incident, as given in the FIR, he stated that *"I had come to know the name of one unidentified person accompanying the accused on that day as Varinder Singh r/o village Fatehpur Jattan whom I had identified at the spot but I did not know his name at that time"*. Counsel for the petitioner further submits that the petitioner for the first time was named by the complainant in his deposition dated 12.05.2017 (Annexure P-2). Thereafter, the prosecution moved an application under Section 319 Cr.P.C. for summoning five persons as additional accused including the petitioner and the trial Court vide impugned order dated 16.08.2017 allowed the application and summoned the petitioner as an additional accused along with four other persons.

Learned counsel for the petitioner has argued that the complainant has made improvement in his version given to the police by naming the petitioner in place of the aforesaid unidentified accompanying the other accused persons though the petitioner was well known to the complainant, as on an earlier occasion, FIR No.156 dated 14.08.2016 was also registered against the petitioner under Sections 307, 323, 341, 427, 148, 149 IPC and Sections 25/27 of Arms Act, at Police Station Dera Bassi. The complainant Dalbir Singh was an eye-witness in this FIR and he has specifically named the petitioner in the said FIR, which was registered on his statement about one month before registration of the present FIR.

Learned counsel for the petitioner has referred to operative part of the FIR No.156. In the statement made by the present complainant Dalbir Singh in FIR No.156, the petitioner has been named as resident of Village Fatehpur Jattan and has been attributed specific role for damaging the car with an iron rod. It is thus submitted that the version given by the complainant in the present case while appearing as PW1 that he later on came to know that said unidentified person was Varinder Singh i.e. the present petitioner, is not believable in view of the aforesaid facts that the petitioner was well known to the complainant, as the complainant in the earlier FIR has given all the details about the petitioner.

Learned counsel for the petitioner has relied upon **Brijendra Singh and others Vs. State of Rajasthan, 2017 (3) RCR (CrI.) 374** to submit that though the power given to the Court under Section 319 Cr.P.C. is a discretionary and extraordinary power, but the same has to be exercised sparingly and only in those cases, where the circumstances of the case so

warrant. Counsel for the petitioner has further relied upon **Hardeep Singh Vs. State of Punjab and others, 2014 (1) RCR (CrI.) 623**, where the Hon'ble Supreme Court has held as under: -

“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 chargesheet. 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 chargesheeted 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 chargesheeted 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 Section 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh.”

Learned counsel for the petitioner has thus submitted that the trial Court has wrongly relied upon the improvised version given by the complainant that he came to know that unidentified person was the petitioner.

In reply, learned State counsel, on instructions from HC Paramjit Singh, could not dispute the factual position and submits that the petitioner was not named in the FIR and even during the investigation, complainant Dalbir Singh never made any statement that the petitioner was the one person, who was named as an unidentified person in the FIR. It is further submitted that the report under Section 173 Cr.P.C. was submitted only against the accused persons who were named in the FIR.

After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons: -

(a) The petitioner is not named in the FIR and even during the investigation, the complainant never raised any finger or doubt towards the petitioner and therefore, the version given by the complainant for the first time

while appearing as PW1 that he has come to know the name of one unidentified person as Varinder Singh i.e. the present petitioner, is not believable, as the petitioner at no stage of investigation has given any such application to the Investigating Officer.

(b) It is apparent from the perusal of FIR No.156 that PW1 Dalbir Singh was also the complainant in this FIR also and the petitioner was nominated as one of the accused by name with the allegation that he has damaged his car with an iron rod and therefore, once the complainant Dalbir Singh has named the petitioner with his clear identification in the said FIR, which was registered just one month prior to registration of the present FIR, therefore, it is unbelievable that in the present FIR, the complainant will nominate an unidentified person though he is well known to the petitioner and later stating on oath that said unidentified person was petitioner Varinder Singh.

(c) In view of the judgment of the Hon'ble Supreme Court in **Hardeep Singh's** case (supra), the complainant has failed to produce any cogent evidence, which would warrant summoning the petitioner as an additional accused.

Accordingly, the present petition is allowed and the impugned order dated 16.08.2017 passed by the Additional Sessions Judge, SAS Nagar (Mohali) qua the petitioner is set aside.

[ARVIND SINGH SANGWAN]
JUDGE

02.07.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No