

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No.2211 of 2018 (O&M)

Date of Decision : 19.11.2018

Amandeep Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Preetinder S.Ahluwalia, Advocate for the petitioner.

Mr. V.G.Jauhar, Sr. DAG, Punjab.

Mr. Tejinder Pal Singh, Advocate for respondent No.2.

RAJ SHEKHAR ATTRI, J. (Oral)

The petitioner has preferred the instant revision petition assailing the order dated 23.05.2018, vide which the trial court has dismissed the application filed by the prosecution under Section 319 Cr.P.C. for summoning Dana Singh (respondent No.2 herein) as an additional accused to face trial for the offences under Sections 307, 336, 506, 34 IPC.

Briefly stated, it is a case of the prosecution that on 06.10.2017 at about 12:25 p.m., the petitioner alongwith his paternal uncle jagroop Singh was present in the field. At that time, Gurjant Singh while armed with .22 bore rifle and his son Dana Singh armed with .12 bore rifle came on a two-wheeler. An altercation took place between Jagroop Singh and the duo. The petitioner ran towards them but before he could reach there, Gurjant Singh fired two shots in the air with his revolver and then fired one shot which hit Jagroop Singh in the abdomen. After receiving gun shot injury, jagroop Singh fell down. The assailants escaped from the spot on the two-wheeler by raising *lalkaras* and extending threats.

The police investigated the matter and declared Dana Singh as innocent. As such, the final report under Section 173 Cr.P.C. was submitted only against Gurjant Singh.

After framing of charge, prosecution examined complainant-eye witness Amandeep Singh as PW1 and injured Jagroop Singh as PW-2.

The public prosecutor moved an application under Section 319 Cr.P.C. on 22.05.2018 to summon Dana Singh as an additional accused to face trial alongwith Gurjant Singh by pleading that a prima facie case is made out against Dana Singh. However, said application was dismissed by the learned trial court vide order dated 23.05.2018 while observing in para No.9 as under:-

“For the purpose of seeking appearance of Dana Singh in this case by arraying him as an additional accused, the prosecution is placing reliance upon the testimony of the prosecution witnesses namely PW1 Amandeep Singh, complainant in this case and PW2 Jagroop Singh injured. In his spontaneous version at the time of getting the FIR recorded, complainant Amandeep Singh had not described the usage of the firm arm i.e. .12 bore gun by Dana Singh and when the police did not rely upon his version regarding the presence of Dana Singh at the place of occurrence, then on 28.11.2017, he moved another application thereby levelling the allegations by submitting that said Dana Singh had fired the shots through .12 bore gun towards the complainant and the injured, but as they were standing at a distant place, the fire shots from the gun of Dana Singh could not have been caused hurt to them. But this plea of complainant Amandeep Singh is missing in his spontaneous version and in order to falsify the version of the police vide which the police had arrived at a conclusion regarding non-involvement of Dana Singh at the spot, on account of his absence, the complainant

moved subsequent application on 28.11.2017 to put the story in such a way so as to make the presence of said Dana Singh much more probable at the spot. So, the improvements made subsequently by complainant Amandeep Singh through his letter dated 28.11.2017 itself are not sufficient so as to assume that the subsequent version having been made by said complainant is much more sustainable at this stage for the purpose of arraying Dana Singh as an additional accused in this case especially when the police during the course of its investigation arrived at a conclusion that there was no probability of the presence of said Dana Singh at the spot at the time of the commission of the alleged offence. For the purpose of summoning a person as an additional accused, the evidence in this regard should satisfy the test, which should be more than prima facie and if test is not complied with, the Court cannot straightway exercise the powers under Section 319 Cr.P.C. to summon the person, who has been sought to be arrayed as an additional accused. Moreover, as per statement under Section 161 Cr.P.C. having been made by Jagroop Singh on 15.10.2017 to the Investigating Officer, he has not named Dana Singh for firing the shots towards complainant Amandeep Singh and Ajaib Singh. Said Jagroop Singh injured has not stated in his version that on account of the alleged firing of the said shots from the gun of Dana Singh, both complainant and Ajaib Singh had escaped unhurt since they were standing at a distant place from where the fires were allegedly shot by Dana Singh and the absence of this version in the statement of Jagroop Singh itself prima facie draws the inference that the version having been put-forth by Amandeep Singh on 28.11.2017 regarding firing of shots by Dana Singh towards complainant and his father Ajaib Singh is concocted one and after-thought due to the passage of time i.e. the expiry of the period of about 1½ months from the date of the alleged occurrence. So, the contradictory version having been made by complainant Amandeep Singh and injured

Jagroop Singh regarding the part played by Dana Singh, who has been sought to be arrayed as an additional accused prima facie results in embellishment and version of complainant Amandeep Singh thereby levelling allegations of firing the shots by Dana Singh through his weapon towards complainant and Ajaib Singh appears to be a creature of after-thought, which itself spells out the introduction of the coloured version, exaggerated account and concocted story as a result of deliberation and consultation especially when the omission on the part of complainant to attribute the specific part played by him in his previous statement, has not been satisfactorily explained.

I have heard learned counsel for the parties and have gone through the record.

First of all, this court would like to deal with the scope of Section 319 Cr.P.C. However, the issue is no more res-integra.

Hon'ble Supreme Court, in para 49 to 53 of its judgment in Hardeep Singh v. State of Punjab, 2014(1) R.C.R.(Criminal) 623, after a detailed discussion on the issue and referring to all the earlier important judgments on Section 319 Cr.P.C., with a particular reference to its earlier Constitution Bench Judgment in Dharampal v. State of Haryana, observed as under:-

"It is thus aptly clear that until and unless the case reaches the stage of inquiry or trial by the court, the power under Section 319 Cr.P.C. cannot be exercised. In fact, this proposition does not seem to have been disturbed by the Constitution Bench in Dharam Pal (CB). The dispute therein was resolved visualising a situation wherein the court was concerned with procedural delay and was of the opinion that the Sessions Court should not necessarily wait till the stage of Section 319 Cr.P.C. is reached to direct a person, not facing trial, to

appear and face trial as an accused. We are in full agreement with the interpretation given by the Constitution Bench that Section 193 Cr.P.C. confers power of original jurisdiction upon the Sessions Court to add an accused once the case has been committed to it.

In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor the legislature could have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 Cr.P.C.

Accordingly, we hold that the court can exercise the power under Section 319 Cr.P.C. only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained herein above.

There is yet another set of provisions which form part of inquiry relevant for the purposes of Section 319 Cr.P.C. i.e. provisions of Sections 200, 201, 202, etc. Cr.P.C. applicable in the case of Complaint Cases. As has been discussed herein, evidence means evidence adduced before the court. Complaint Cases is a distinct category of criminal trial where some sort of evidence in the strict legal sense of Section 3 of the Evidence Act 1872, (hereinafter referred to as the 'Evidence

Act') comes before the court. There does not seem to be any restriction in the provisions of Section 319 Cr.P.C. so as to preclude such evidence as coming before the court in Complaint Cases even before charges have been framed or the process has been issued. But at that stage as there is no accused before the Court, such evidence can be used only to corroborate the evidence recorded during the trial for the purpose of Section 319 Cr.P.C., if so required.

What is essential for the purpose of the section is that there should appear some evidence against a person not proceeded against and the stage of the proceedings is irrelevant. Where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well, Section 319 Cr.P.C. acts as an empowering provision enabling the court/Magistrate to initiate proceedings against such other persons. The purpose of Section 319 Cr.P.C. is to do complete justice and to ensure that persons who ought to have been tried as well are also tried. Therefore, there does not appear to be any difficulty in invoking powers of Section 319 Cr.P.C. at the stage of trial in a complaint case when the evidence of the complainant as well as his witnesses is being recorded.

Thus, the application of the provisions of Section 319 Cr.P.C., at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 Cr.P.C. can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to herein above, adding a person as an accused, whose name has been mentioned in Column 2 of the charge sheet or any other person who might be an accomplice."

18. The conclusions arrived at, while laying down the law on the true import of Section 319 Cr.P.C. in para 98 and 99 of its judgment in Hardeep Singh's case (supra), came to be

reiterated by the Hon'ble Supreme Court in its recent judgment in Babubhai Bhimabhai Bokhiria and another v. State of Gujarat and others, 2014(2) R.C.R.(Criminal) 915 : 2014 (5) SCC 568. To avoid repetition and for the sake of brevity, the relevant observations made by the Hon'ble Supreme Court in para 1, 7 and 8 of its judgment in Babubhai Bhimabhai Bokhiria's case (supra), which can be gainfully followed in the present case, read as under :-

"Before we proceed to consider the case, we must remind ourselves the maxim "judex damnatur cum nocens absolvitur" which means that a Judge is condemned when guilty person escapes punishment. But, at the same time, we cannot forget that credibility of the justice delivery system comes under severe strain when a person is put on trial only for acquittal.----"

Hon'ble Supreme Court further held:-

"Before we proceed to deal with the evidence against the appellant and address whether in light of the evidence available, power under Section 319 of the Code was validly exercised, it would be expedient to understand the position of law in this regard. The issue regarding the scope and extent of powers of the court to arraign any person as an accused during the course of inquiry or trial in exercise of power under Section 319 of the Code has been set at rest by a Constitution Bench of this court in the case of Hardeep Singh v. State of Punjab, 2014(1) R.C.R.(Criminal) 623 : 2014(1) Recent Apex Judgments (R.A.J.) 384 : 2014 (1) SCALE 241. On a review of the authorities, this Court summarised the legal position in the following words:

- "98. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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.

- 99. *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 Cr.P.C...."*

Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher."

Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court, in the cases referred to herein above, it is unhesitatingly held that since the learned trial court failed to follow the law laid down by the Hon'ble Supreme Court, the impugned order cannot be sustained.

In the instant case, it has been specifically stated in FIR that both assailants Gurjant Singh and Dana Singh armed with fire arm weapons came together at the spot on a two-wheeler and after causing injuries on the

person of Jagroop Singh, both escaped together on the same vehicle. The presence of Dana Singh at the time of occurrence is well established. At that time petitioner Amandeep Singh and Ajaib Singh were at some distance. However, if we go through the evidence of PW2 Jagroop Singh, injured, it is very much clear that Dana Singh also associated with Gurjant Singh in the attack. This court would like to reproduce the relevant part of the examination-in-chief of PW2 Jagroop Singh hereunder:-

“On 06.10.2017, at about 12:15 p.m., I reached my fields on a cycle. My brother Ajaib Singh and my nephew Amandeep Singh were already there in the fields on the motor. I parked my cycle in the passage (pahi) and my brother and nephew were sitting in the fields at the distance of One Qilla from me. Accused Gurjant Singh present in the Court alongwith his son Danna Singh came on a Scooty. Gurjant Singh was armed with revolver while his son Danna Singh was armed with DBBL. They came near me and started altercation with me. On hearing noise, my nephew Amandeep Singh proclaimed and asked me not to worry and he is coming. Danna Singh shot a fire from his gun towards me from his revolver thrice and out of which one shot hit me on my abdomen and I fell down on the ground and fell unconscious.

The role attributed by Jagroop Singh to Dana Singh has gone unchallenged in the cross-examination conducted on behalf of Gurjant Singh. Although, Dana Singh was not a party though at the time of conducting cross-examination yet the evidence, so recorded shall be considered for the purpose of ascertaining whether more than a prima facie

case is made out against respondent No2. Dana Singh to summon him as an additional accused. Even if we go through the statement of Ajaib Singh son of Chhota Singh, recorded by the police, it also establishes that both father and son came together on a two-wheeler having fire arms in their hands and both escaped together.

Learned counsel for private respondent has vehemently contended that both Jagroop Singh and Amandeep Singh, while appearing as witnesses in the Court, had made material improvements to implicate Dana Singh.

To the mind of this Court, this is no stage to critically examine the evidence of these witnesses especially when Dana Singh was not a party to this lis. However, PW2 Jagroop Singh, injured, was never confronted with the police statement but this aspect will not affect the defence of Dana Singh as he was not a party to the proceedings.

Even if we go through the final police report, it establishes that both Gurjant Singh and Dana Singh came together armed with deadly weapons and there was altercation between Gurjant Singh and Dana Singh on one hand and Jagdeep Singh on the other hand. It is an admitted fact that there was a prior enmity between both the parties. The presence of Dana Singh is well established even from bare perusal of the material collected by the investigating agency during the investigation. However, during the trial, both PW1 complainant Amandeep Singh and PW2 Jagroop Singh, injured have attributed a specific role to Dana Singh. It is altogether a different aspect that prosecution witnesses shall be independently examined by the trial court, if Dana Singh had been given opportunity to cross-examine them.

It has been argued on behalf of the private respondent that Dana Singh was declared innocent during the trial. This court has gone through the final police report wherein it is simply mentioned that during investigation Dana Singh was found innocent albeit this observation is without any substance and it sans reasoning. The investigating agency has no jurisdiction to critically examine the direct evidence and then to discard it. Even if, a contradictory evidence appears during the investigation, the same is to be put up before a criminal court and it is only the judicial court which has to critically examine the evidence so collected.

This Court is of the considered view that declaring Dana Singh as innocent by the investigating agency is without any basis and this fact cannot be accepted.

In the present case, it is held that since the learned trial court failed to follow the law laid down by the Hon'ble Supreme Court in Hardeep Singh's case (supra), the impugned order cannot be sustained in the eye of law and the same is liable to be set aside.

After going through the material available on the record for the purpose of this application under Section 319 Cr.P.C., this court is of the view that more than prima facie case is made out against Dana Singh to face trial for the offences under Sections 307, 336, 506 read with section 34 IPC. The impugned order dated dated 23.05.2018, passed by the learned Addl. Sessions Judge, Sangrur has been found to be suffering from patent illegality and also contrary to law laid down by Hon'ble Supreme Court in the cases referred to hereinabove.

Consequently, the instant revision petition stands allowed and the impugned order dated 23.05.2018 is set aside. It is ordered that

respondent No.2 Dana Singh be summoned as an additional accused to face trial for the offences under Sections 307, 336, 506 read with Section 34 IPC.

However, from a bare perusal of the record, it transpires that the trial against Gurjant Singh is at the fag end. The statement of Gurjant Singh under Section 313 Cr.P.C. has already been recorded on 09.07.2018.

This Court has issued directions vide order dated 11.07.2018, for staying the final order due to which the trial has been kept pending. Section 319 of the Code provides that such person summoned thereunder could be tried together with the other accused already facing trial, when this happens the proceedings in respect of such persons shall commence afresh and the witnesses are to be reheard. The entire trial may commence *de novo* with fresh examination-in-chief and cross-examination of the witnesses for the prosecution and the defence.

This Court finds it difficult to accept. Section 319(1) of the Code uses the words "such person could be tried together with the accused...." while Section 319(4)(a) mandates that the proceedings in respect of such person shall be commenced afresh and the witnesses reheard. The interpretation of the two provisions need not detain this Court, the same having fallen for consideration by the Hon'ble Supreme Court in a judgment reported in [**AIR 2002 Supreme Court 2031 : \(2002 Cri LJ 2806\)**](#) [**\(Shashi Kant Singh v. Tarkeshwar Singh\)**](#). Hon'ble Apex Court was considering the question if a person could be summoned under Section 319 of the Code after the trial of other accused had concluded, when his name had surfaced in depositions during the course of the trial. In this case, the High Court held that the trial having been concluded and that since no

sessions trial was pending, Section 319 of the Code had no application as the pre-requisite for application thereof was the pendency of a trial against another accused. Their Lordships held that undoubtedly the proceedings are required to be commenced afresh and the witnesses reheard in respect of an accused summoned under Section 319 of the Code. There has to a *de novo* trial. But the question of such a person summoned to face trial had to be examined in the context of Section 319(1) read with Section 319(4)(a). Interpreting the words "could be tried together with the accused", in Section 319(1) of the Code their Lordships held the same to be directory holding in the relevant extract of paragraph 10 quoted below that :

"..... "could be" cannot under these circumstances be held to be "must be". The provision cannot be interpreted to mean that since the trial in respect of a person who was before the Court has concluded with the result that the newly added person cannot be tried together with the accused who was before the Court when order under Section 319(1) was passed. The order would become ineffective and inoperative nullifying the opinion earlier formed by the Court on the basis of evidence before it that the newly added person appears to have committed the offence resulting in an order of his being brought before the Court."

Their Lordships thus held in paragraph 12 of the judgment :

"The mandate of law of fresh trial is mandatory whereas the mandate that the newly added accused would be tried together with other accused directory".

Thus position emerges in law is that the trial in respect of a person summoned under Section 319 of the Code had mandatorily to be commenced afresh, *de novo*, but it is not mandatory that such person be only tried along with other accused already facing the trial.

In these circumstances, this court is of the view that the trial

against Gurjant Singh shall continue. However, trial against Dana Singh may be separated as per the provisions of Section 319 (4)(a) Cr.P.C by the trial court and fresh evidence be adduced.

19.11.2018
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
<i>Whether Reportable :</i>	<i>Yes/No</i>

