

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

**CRR-521-2018 (O&M)
Date of Decision: 19.12.2018**

Rajesh and others

.....PETITIONER(s).

VERSUS

State of Haryana

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Arjun Sheoran, Advocate
for the petitioners.

Mr. R.K.Makkad, DAG, Haryana.

RAJ SHEKHAR ATTRI, J.(Oral)

The present revision petition is directed against the impugned order dated 28.10.2017 whereby the petitioners were summoned to face trial under Sections 148, 149, 323, 324, 325, 302, 307 and 506 of Indian Penal Code.

Briefly stated the facts of the case are that the a case was registered on a complaint made by Hukam Singh wherein he alleged that today on 12.6.2016 at about 1:30 p.m., he along with his son Bhajji and Hari son of Parkash was going from Panipat to his village Chhajpur Khurd on his tractor. His son had parked his motorcycle in front of the shop of Nande at bus stand. Therefore, his son Bhajji and Hari son of Parkash alighted from the tractor to pick up the motorcycle. When his son picked up the motorcycle, in the meantime, Sunil son of Jagpal came on

Splendor motorcycle. Ravit son of Ramesh and Vicky son of Jaswant were sitting on pillion behind him on motorcycle. Sheela son of Paras was on his motorcycle Pulsar and Sumit son of Jagdish, Rinku son of Rai Singh were sitting behind him on his motorcycle. Sunder son of Om Singh was on motorcycle Bullet and Rajesh son of Prem and Sanjay son of Bishni were sitting behind him on the said motorcycle. Ankush son of Rajinder was on his motorcycle make Splendor and Jagdish son of Devi Singh and Tejpal son of Nar Singh were sitting behind him. Joni son of Sahab Singh was on his motorcycle Bullet and Sachin son of Khilla was sitting behind him. They were armed with swords, pistols, hockeys, iron bars and gandasi etc. They attacked his son Bhajji and Hari son of Parkash. Ravit son of Ramesh was armed with a hockey, Vicky son of Jaswant was armed with wooden baton, Sheela son of Paras was armed with gandasi, Sumit son of Jagdish was armed with pistol, Rinky son of Rai Singh was armed with iron bar, Sunder son of Om Singh was armed with wooden baton, Rajesh son of Prem was armed with sword, Jagdish son of Devi Singh was armed with lathi, Tejpal son of Nar Singh was armed with iron bar, Joni son of Sahab Singh was armed with wooden handle of spade, Sachin son of Ruhla Ram was armed with sword and Joginder son of Sahi Ram was having gandasi with him. Rajesh son of Prem exhorted to kill both of them because they were pressing hard for their ejectment form panchayat land. Pursuant to exhortation, accused inflicted injuries to his son and Hari son of Parkash with their respective weapons. When he raised alarm, accused sped away on their motorcycles threatening to kill them in case any action is taken against them. In the

meantime, his brother Mahender came there and they removed both the injured to Prem Hospital where Hari son of Parkash succumbed to his injuries on 14.06.2016 during treatment.

I have heard the learned counsel for the parties and 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 remain res-integra.

The 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.”

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.

xx xx xx xx”

Before I 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 (supra)**. On a review of the authorities, it has been observed :

- "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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C...."

Thus, 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.

On an independent appraisal of the record available on file, no case is made out for interference by this Court.

Dismissed.

(RAJ SHEKHAR ATTRI)
JUDGE

December 19, 2018
Paritosh Kumar

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