

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

**CRR No.145 of 2017 (O&M)
Decided on: 10.01.2019**

Ajay @ BachiPetitioner
Versus
State of Haryana and othersRespondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Kuldeep Sheoran, Advocate for the petitioner.

Mr. Surinder Singh, AAG, Haryana.

Mr. Rishab Lohan, Advocate for respondents No.2 and 3.

ARVIND SINGH SANGWAN, J.

Prayer in this revision petition is for setting-aside the order dated 28.10.2016 passed by the Additional Sessions Judge, Hisar vide which the application filed by the prosecution under Section 319 of the Code of Criminal Procedure (in short 'Cr.P.C') for summoning Shamsher Singh and Surender Singh as additional accused, was dismissed.

Brief facts of the case are that the petitioner got the FIR No.50 dated 22.01.2015 under Sections 307/34 of the Indian Penal Code (in short 'IPC') and 25 of the Arms Act at Police Station Sadar Hisar, District Hisar, with the allegations that his elder brother Anuj is studying and keep on roaming. On 20.01.2015, he had a scuffle with a person named Chhatarpal. On 21.01.2015, the complainant received a call from Shamsher Singh to come near Jat College, however, he did not go to that place. In the evening, the complainant received another call from accused Anil on his mobile phone asking him to come to the road for effecting compromise and when he reached there, Surender

Singh, Shamsher Singh and Anil were present there on a motorcycle and they asked the complainant to have a talk. In the meantime, Shamsher Singh with a country-made pistol fired a shot on him with an intention to kill, which hit him on the right side of oxillary portion (flank) and pellets hit him on the right arm and thereafter, they (Surender Singh, Shamsher Singh and Anil) ran away from the spot. The complainant was taken to hospital by Arun. Later on, the police conducted the investigation and found Shamsher Singh and Surender Singh to be innocent and submitted the challan against accused – Anil. After framing the charge against Anil, the trial Court recorded the statement of the complainant – Ajay @ Bachhi as PW8 and when he made the statement on similar line as made in his statement before the police under Section 161 Cr.P.C., he reiterated the version that Anil, Shamsher Singh and Surender Singh were present at the bus stop and Shamsher Singh fired a shot on him with an intention to kill, which hit on his right side of oxillary portion (flank) and then all the 03 persons ran away from the spot. Thereafter, the prosecution moved an application under Section 319 Cr.P.C., for summoning the aforesaid persons namely Shamsher Singh and Surender Singh as additional accused. In the application, it is stated that despite the fact that it is categorically stated in the FIR that Shamsher Singh had fired the shot with intention to kill the complainant, the police did not submit the challan against him and he was kept in Column No.2.

The trial Court vide impugned order dated 28.10.2016, dismissed the application by making the following observations:-

“4. Rival contentions of the learned Public

Prosecutor for the State assisted by learned counsel for the complainant and learned defence counsel have been heard at length and case record has been perused carefully.

5. *The learned PP for the State assisted by learned counsel for the complainant argued that the present case had commenced on the statement Ex.P7 of the complainant wherein he has categorically named both the accused persons Shamsher and Surender as his assailants. On the basis of this statement, after recording the FIR, the investigation had commenced. The police during investigation did not challan these two accused persons Shamsher and Surender. Even no reason for not challaning them has been given by the police. When the complainant Ajay @ Bachhi and prosecution witness No.8 stepped into witness box, he has reiterated his version of statement Ex.P7. Not only this, even in the statement of Arun under Section 161 Cr.P.C., the same version finds mentioned. In support of his contentions, he placed **Ranjit Singh vs State of Punjab 1998(4) RCR (Criminal) 552**, wherein Hon'ble Supreme Court of India on Section 319 of Cr.P.C., held that Sessions Judge has power to add a new accused after recording some evidence and not before it.*

6. *On the other hand, the learned defence counsel argued that even the case against the present accused is false. The complainant Ajay @ Bachhi in his statement Ex.P7 had stated that all three accused persons Anil, Shamsher and Surender fired on him, whereas when he stepped into witness box as witness no.8, he has stated that accused Anil did not fire on him. Attracting the attention of the Court towards the final report under Section 173 Cr.P.C., it was argued that the investigation in this case was conducted by senior IPC officers and they found that only the present accused Anil was responsible*

for this offence. The police did not challan them and against the police, till, no application/complaint has been moved by the complainant to the effect that they have been wrongly left by the police. The complainant himself is a hardened criminal and is facing jail in 3-4 cases under Sections 302 and 307 IPC.

Ultimately, it was argued by him that the present application under Section 319 Cr.P.C. has been moved with mala fide intention to delay the trial of the present case so that the present accused can be harassed. Hence, it should be dismissed with exemplary costs.

*7. In view of the above discussion and after careful perusal of the case file, this Court is of the considered opinion that so far as the ruling as relied upon by the learned PP for the State is concerned, there no dispute in the mind of this Court about the powers under Section 319 of Cr.P.C., that after some evidence of the prosecution, if a Sessions Judge feels that some other person should also be tried with the accused facing the trial then that person can be summoned under Section 319 Cr.P.C. However, in case titled **Hardeep Singh vs State of Punjab and others, 2014(3) SCC 92**, wherein Hon'ble Supreme Court of India held that 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 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". These powers are extra ordinary nature and should be used exceptionally.

8. In the present case on the same version, which has been stated by the complainant as witness no.8, the police during investigation did not find tow persons Shamsher and Surender involved in the commission of crime and did not challan them. On the same version, it would not be in the interest of justice to order summoning of these two persons as additional accused persons. It was rightly argued by the learned defence counsel that the police had found these two persons innocent after threadbare investigation and the report under Section 173 of Cr.P.C. reflects that the weapon of offence has been recovered from the possession of the present accused. Investigation of this case was verified by two IPC Officers Rahul Hooda ASP/SHO P.S. Sadar Hisar and Ms. Manisha Chaudhary, IPS/ASP Hisar and both of them did not find that involvement of these two accused persons Shamsher and Surender. So far as the statement of witness Arun under Section 161 Cr.P.C., is concerned, from it, no interference can be draw that this witness was the eye witness of the occurrence rather it is his own version that he had reached on the spot of occurrence after the occurrence and had taken the complainant to the hospital. In respect of the names of the accused persons, his version is hearsay.

9. Commenting much on the evidence of the complainant may prejudice the case of either side, hence, this Court is restraining itself from it. However, the Court is of the opinion that the extraordinary power should not be exercised in this case. Here this Court derives support

*from the case law laid titled **Sarabjit Singh and another vs State of Punjab and another, 2010(2) SCC 141**, wherein Hon'ble Supreme Court of India has held that power under Section 319 Cr.P.C. is an extraordinary power, which is required to be exercised sparingly and if compelling reasons exist for taking cognizance against persons against whom action has not been taken. Material brought before Court must also be such which would satisfy Court that it is one of those cases where its jurisdiction should be exercised. A higher standard for purpose of forming opinion to summon a person as additional accused is required to satisfy the ingredients thereof. An order under Section 319, should not be passed only because first informant or one of the witnesses seeks to implicate other persons. Sufficient and cogent reasons are required to be assigned by Court so as to satisfy ingredients of Section 319. Mere ipse dixit would not serve the purpose. Such evidence must be convincing, at least for purpose of exercise of this extraordinary jurisdiction. For the aforementioned purpose Courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned. Merer existence of a prima facie case may not serve the purpose.*

10. *Accordingly, finding no merit in the application under Section 319 Cr.P.C., the same is hereby dismissed. However, the expressions expressed hereinabove have no bearing on the merits of the case.”*

While issuing notice of motion on 08.02.2017, it was directed that the proceedings in trial will continue but shall not be concluded.

Counsel for the petitioner as well as counsel for the State, on instructions from the Investigating Officer, assisted by counsel for

the respondents No.2 and 3, are *ad idem* that the entire prosecution version is concluded and the trial Court is awaiting the decision of this case.

Counsel for the petitioner has argued that while recording the First Information Report (FIR), the petitioner has specifically stated that Shamsher Singh called him on his mobile phone and asked him to come near a college for effecting compromise, however, the petitioner did not go to the spot. Later on in the evening, he received another call from Anil and when the petitioner reached that place, Shamsher Singh caused a fire-arm injury to the petitioner with a country-made pistol.

Counsel for the petitioner has referred to the statement of the complainant, who appeared as PW8 where, he has reiterated the version given in the FIR. Counsel for the petitioner has also relied upon the statement of Dr. Sunil Bhatti – PW6 wherein he has stated that a fire arm injury corresponding to the injury suffered by the petitioner is recorded in the MLR. It is, thus, submitted on behalf of the petitioner that the police has wrongly kept Shamsher Singh and Surender Singh in Column No.2 by not presenting the challan against them.

In reply, counsel for the State, assisted by counsel for respondents No.2 and 3 has, however, opposed the submissions made by counsel for the petitioner and it is submitted that there is no allegation against accused Surender Singh except that he was present at the spot and the police found him to be innocent during the investigation.

With regard to Shamsher Singh, on the basis of the investigation conducted by the police, it is stated that the investigation

was verified by Ms. Manisha Chaudhary, I.P.S. Assistant Superintendent of Police, Hisar and during the investigation, she recorded the statement of 05 persons from the side of the complainant and 46 persons from the side of the accused/Shamsher Singh and have placed on record the photocopy of the Zimini No.78 recorded by the police in this regard. In this zimini, during the verification, the said Police Officer, held after recording the statement of various persons, who have stated that Shamsher Singh was not present at the spot and was rather present at Grain Market Surya Nagar, Hisar whereas the incident pertains to village Panihar Chowk. In the investigation, it is also found that there was a dispute between the complainant – Ajay @ Bachhi with accused – Anil @ Suresh (facing trial) as both of them are in the business of selling liquor and on account of personal grudge, Anil had opened the fire on the complainant and only Anil was found to be involved as an accused and even the country-made pistol .315 bore along with 05 live cartridges and the motorcycle used in the offence were recovered from the accused – Anil. In this Zimini dated 29.01.2015, it is also recorded that from the perusal of the CDR of the mobile phone of Shamsher Singh and Surender Singh, the allegations against them are not verified. A copy of the Zimini No.78 is taken on record as Mark 'X'.

Counsel for the State as well as counsel for the complainant – Shamsher Singh and Surender Singh have, thus, submitted that the trial Court has recorded a correct finding that neither any recovery was made from them nor they were found involved in the incident as they were not present at the spot. It is also submitted that

even the recovery of weapon, 05 live cartridges and the motorcycle used in the offence was made from accused – Anil, who is facing the trial and even both the complainant and Anil are involved in a business of liquor and are having some grudge against each other.

After hearing the counsel for the parties and going through the record as well as the order passed by the trial Court, I find no merit in the present petition. The statement of the complainant recorded before the police as well as in the Court is nothing but reiteration of the version given to the police. The police during the investigation has found that Shamsher Singh and Surender Singh were not involved in the case and it is Anil, who has committed the offence. The Hon'ble Supreme Court in the judgment ***“Hardeep Singh vs State of Punjab and others” and other connected cases, 2014(1) RCR (Criminal) 623*** has held that while allowing the application under Section 319 Cr.P.C., the Court must record a finding that the evidence which has come on record is not mere re-recording of the statement made before the police under Section 161 Cr.P.C. but some cogent and reliable evidence should come on record.

The operative part of the judgment in ***Hardeep Singh's case (supra)*** is reproduced below:-

“110. 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 charge-sheet. 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 charge-sheeted 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 charge-sheeted 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 Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh.

The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove.”

For the foregoing reasons and in view of the law laid down by the Hon'ble Supreme Court in **Hardeep Singh's case (supra)**, I find no merit in the present petition as no *prima facie* evidence has come on record to summon respondents No.2 and 3 i.e. Shamsher Singh and Surender Singh, accordingly finding no illegality in the impugned order, the revision petition is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

10.01.2019
yakub

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