

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

CRR No.1472 of 2018 (O&M)
Date of decision: 28th August, 2019

Gaurav Sheoran

... Petitioner

Versus

State of Haryana & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Gautam Dutt & Ms. Amanpreet K Sabharwal, Advocates
for the petitioner.

Mr. Amrik Narwal, Dy. Advocate General, Haryana
for respondent No.1/State.

Mr. Sachin Jain, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

This is a revision in terms of Section 401 Cr.P.C. by accused revisionist Gaurav Sheoran in which he has impugned and laid challenge to an order dated 04.04.2018 whereby the Court of learned Additional Sessions Judge, Gurugram summoned the petitioner as an additional accused by virtue of provisions enshrined under Section 319 Cr.P.C.

Heard Mr. Gautam Dutt & Ms. Amanpreet Kaur Sabharwal, Advocates for the petitioner; Mr. Amrik Narwal, Dy. Advocate General, Haryana representing respondent No.1/State; Mr. Sachin Jain, Advocate for respondent No.2 and perused the records of the case.

A criminal case by way of FIR No.227 dated 02.04.2017 under Sections 323, 506, 376, 452 IPC was got registered with Police

Station DLF, Sector 29, Gurugram on the complaint of a married lady aged around 37 years alleging that she was a resident of Iran and while studying in India, had married with the petitioner about 8/9 months prior to this occurrence and after 3/4 months of the wedding a dispute had arisen between them leading to filing of the complaint by the complainant against the husband and his family members in Police Station Women, Gurugram. The complainant complains that she was undergoing Ph.D. in Delhi and on 01.04.2017 while she was living alone in a rented accommodation, around 9:00 p.m. an unidentified person has trespassed surreptitiously into her accommodation and with the use of criminal force tied both her hands and affixed tape on her mouth. It is thereafter, the accused after undressing the complainant, defiled her after thrashing the complainant and showing knife to her. The complainant claims that she managed to send SMS on the police help number and also managed to collect the photographs of the assailant. The complainant had alleged that she was certain that the duplicate key of the house was with her estranged husband and with which the lock of her dwelling unit was opened by the intruder. It is on the basis of the same, the present case was got registered and the accused named as Majid was arrested. Name of the present petitioner was placed in column No.2. It is during the course of trial, the prosecutrix was examined as PW5 and upon her statement, the State moved an application under Section 319 Cr.P.C. for summoning the

person named therein as additional accused, which was allowed by the impugned order and that is how the present matter has come about.

Going through the submissions of the two sides and on perusal of the records. The law on exercise of powers under Section 319 Cr.P.C. has been well spelled out in a five-judge Bench view of Hon'ble the Supreme Court in '**Hardeep Singh vs. State of Punjab and others**' **2014(3) SCC 92**, wherein while considering the law on these powers under Section 319 Cr.P.C., their Lordships have held that such a person who is to be summoned with the aid of Section 319 Cr.P.C. need not necessarily be an accused who has been placed in column No.2 of the chargesheet filed under Section 173 Cr.P.C. and could also be a person whose name has been disclosed in any material before the Court that is to be considered for the purposes of trying the offence. Reverting back to the present case, as is there in the evidence and has been taken note of by the Court below, has drawn the conclusion that there appears to be complicity of the present revisionist with the co-accused in the commission of the offence. The Hon'ble Supreme Court in '**Hardeep Singh's case (ibid)**', has observed as under:-

“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.”

It was held further by their Lordships in **Hardeep Singh’s case (ibid)** that provisions of Section 319 Cr.P.C. are enabling (1) empowering the Court to take appropriate steps for proceeding against any person, or also (2) having committed offence undertrial.

In the instant case, in the light of submissions of the two sides, while considering the statement of the prosecutrix as PW5 wherein it categorically finds mentioned that it was on the statement of the landlord of the dwelling unit that there were two keys of the place, one was with the complainant and the other with the petitioner, and the second key claimed to be with the petitioner husband has been got recovered from the accused Majid apprehended by the police and further from the mobile phone got recovered from the accused mobile number of the revisionist is shown to have been dialled, further corroborates the same. The Court below has even considered that the black bag proved on the record as Ex.MO-1 carrying the words ‘Indian Roads Congress, 162 PWD council meeting at Shimla, 13-14.5.2001, Himachal Pardesh Public Works Department’ has been shown to be the one belonging to the father of the petitioner.

The claim of the revisionist that the petitioner has been falsely implicated on account of innumerable matrimonial disputes between the couple whereby resort has been sought to be made under different provisions of law, does not come to the aid of the petitioner firstly on the score that mere fact of pendency of other civil/criminal litigation between the parties is no ground at this juncture to hold that the allegations are false, as it is upon apprehension of the accused Majid immediately after the occurrence revealed the modus operandi of the accused and the person who is at his back, and further that it is upon appreciation of the material and evidence before it, the Court has resorted to summoning additional accused under Section 319 Cr.P.C. More so, without completion of the trial, it would be too preposterous for Court to draw any conclusion on this stand of the petitioner side which is sought to be stoutly rebutted by learned State counsel and the private respondent. There is apparently no illegality or impropriety in these findings. In the light of what has been detailed and discussed above, this Court does not feel inclined to show any indulgence. The revision petition being hopelessly without any merit, stands dismissed.

(FATEH DEEP SINGH)
JUDGE

August 28, 2019

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No