

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

**CRR-695-2018 (O&M)
Date of Decision: 13.2.2019**

Happy @ Harman Kumar (minor) and another

.....PETITIONER(s).

VERSUS

State of Punjab and another

.....RESPONDENT(s).

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

Present: Mr. Gopal Sharma, Advocate
for the petitioners.

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

Mr. Mohit Rana, Advocate,
for respondent No.2.

RAJ SHEKHAR ATTRI, J.

This is a revision petition against the order dated 6.1.2018 passed by learned Sessions Judge, SAS Nagar (Mohali) whereby the petitioners namely Happy @ Harman Kumar (minor) and Davinder Singh were summoned under Section 319 of Code of Criminal Procedure to face trial along with the main accused.

The facts of the case are that FIR was registered on the statement of the prosecutrix wherein she alleges that on 30.12.2016 at about 7:00 p.m. she was standing outside her house and when main accused Harwinder Singh accompanied by two boys namely Happy @ Harman Kumar (minor) and Davinder Singh petitioners were also present

there. At that time, Harwinder Singh told her to come to village Saneta as he wanted to talk to her on some matter, failing which he threatened to abduct her.

Prosecution version is that she did not tell anything about it to her family members and went to village Saneta where Harwinder Singh threatened her with dire consequences and took her with him on his motor cycle. He firstly kept her in his house and tried to forcibly misbehave with her in night. He also gave beating to her and compelled her to marry him. On the next morning, she was brought to Zirakpur in a bus from where she was taken to Kala Amb in the house of her aunt.

During the investigation, the petitioners were found innocent and a charge sheet was submitted only against accused Harwinder Singh. However, the prosecution moved an application to summon them as additional accused which was allowed and both of them have been summoned as additional accused.

I have heard the counsel for the parties and gone through the material available on record.

First of all, this court would like to deal with the scope of 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.

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 in para 110 as under:-

“110. We accordingly sum up our conclusions as follows :

Question Nos. I & 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 incident in this case forms two segments. The first part of occurrence pertains to 30.12.2016 at about 7:00 p.m. when Harwinder Singh was standing outside her house, when two boys also accompanied him. No role has been attributed to the petitioners at that time. It is simply stated that they are also of her village and they were standing along with the main accused.

The second part solely relates to Harwinder Singh who threatened the prosecutrix and called her to village Saneta and she reached there. She was compelled to marry Harwinder Singh who misbehaved with her. No role has been attributed to the petitioners if they abetted the prosecutrix to go to village Saneta and ever threatened her.

Mere standing with main accused Harwinder Singh in their own village does not amount to an offence, especially when no overt or covert act has been attributed to them. The material available on record does not fulfill the guidelines issued by Hon'ble Supreme Court in **Hardip Singh's** case (supra). It seems that the court below failed to appreciate the material available on record.

In view of the above, this Court is of the view that a strong *prima facie* case is not made out against the accused petitioners with regard to their role in the crime. Therefore, the impugned order is not sustainable in the law as it suffers from illegality, irregularity and infirmity.

Accordingly, the present petition is accepted and the impugned order dated 6.1.2018 is set aside.

February 13, 2019
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

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