

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Revision No. 3285 of 2019
Date of Decision: 09.12.2019**

Kalo Bai @ Raj Kaur and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Anterpreet Singh, Advocate
for the petitioners.

HARNARESH SINGH GILL, J.

The petitioners have filed this petition challenging the order dated 14.10.2019 passed by learned Additional Sessions Judge, Ludhiana vide which they were ordered to be summoned to face the trial as additional accused on an application moved by complainant Chhinder Kaur under Section 319 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.').

Learned counsel for the petitioner submits that in the present case FIR was registered against the petitioners along with other co-accused on the allegations that all the accused in connivance with each other had committed the murder of Manjit Kaur and Bidhi Chand but during investigation conducted by Deputy Superintendent of Police, Dakha, both the petitioners were found innocent. He further submits that after the said inquiry, a Special Investigation Team (for short 'SIT') was constituted and

during investigation by the SIT, it was found that at the time of alleged incident, petitioner No. 1 was 8 months pregnant whereas petitioner No. 2 had gone to the house of Member Panchayat Jangir Singh and in the said enquiry also, the petitioners were found innocent. He further submits that the trial Court has summoned the petitioners to face the trial as additional accused without taking into consideration the detailed enquiry conducted by SIT. He further submits that the petitioners have been falsely implicated in the present case being relatives of Jaswant Singh.

I have heard the learned counsel for the petitioner and have gone through the paper book and find no merit in the present petition.

It would be relevant to reproduce Section 319 Cr.P.C. which reads as under:-

“Power to proceed against other persons appearing to be guilty of offence:-

- (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*
- (2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.*
- (3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.*
- (4) Where the Court proceeds against any person under sub-section (1), then-*

(a) the proceedings in respect of such person shall be commenced afresh, and

witnesses re-heard.

- (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

Thus, as per the above provision, the trial Court may summon any person to face the trial as an accused if there is sufficient material available against the said person during trial to proceed against him.

In ***Guriya alias Tabassum Tauquir versus State of Bihar, AIR, 2008, SC. 95***, The Apex Court had the occasion to analyze Section 319 Cr.P.C. and it was observed as under:

Power under [Section 319](#) of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it, if it is satisfied that any person other than accused has committed an offence and he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in [Section 319](#) contemplates evidence of witnesses given in Court. Under Sub- section (4)(1)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of Sub-section (4)(1)(b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned.”

While dealing with the powers under Section 319 Cr.P.C., the Apex Court in '*Hardeep Singh versus State of Punjab and others, 2014(1) R.C.R. (Criminal) 623*, has held 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 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.

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 chargesheeted 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.”

In the present case, the FIR has been got registered on the statement of complainant Chhinder Kaur against the petitioners and other co-accused qua committing murder of Malkit Kaur and Bidhi Chand. In her statement, the complainant has specifically named the petitioners alleging that both the petitioners had caught hold the arms of her sister (Manjit Kaur) while the other co-accused were giving beatings to both the deceased. During investigation, the petitioners were declared innocent and they were kept in column No. 2 but on the application moved by the complainant, they were summoned to face the trial as additional accused.

The trial Court in its elaborate order has dealt with the statement of the complainant and the investigation conducted by the investigating agency. Although the petitioners were declared innocent during investigation but the complainant while appearing in the witness box *prima facie* substantiated the factum of involvement of the petitioners in the commission of alleged offence. It has been noted by the learned trial Court that there was nothing substantive on record at this stage to infer that both

the petitioners were not involved in the commission of alleged offence.

In view of the above, I find no infirmity in the order passed by the trial Court. The order is well reasoned.

The petition is dismissed.

(HARNARESH SINGH GILL)
JUDGE

December 09, 2019
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes