

CRM-M-46148-2018

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

CRM-M-46148-2018 (O & M)

Date of Decision:16.01.2020

Maya Ram and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Shekhar Verma, Advocate,
for the petitioners.

Mr. Tanuj Sharma, AAG, Haryana.

Mr. J.S.Arora, Advocate,
for respondents No.2 and 3.

HARNARESH SINGH GILL, J.

The present petition has been filed under Section 482 Cr.P.C. for quashing of the order dated 24.08.2018 (Annexure P-11) passed by the learned Additional Sessions Judge, Kurukshetra, whereby an application filed by complainant-Ashok Kumar (petitioner No.3) under Section 319 Cr.P.C., has been dismissed, qua respondents No.2 and 3.

In the present case, FIR No.246 dated 20.12.2016, under Sections 148, 149, 323, 427, 452 and 506 IPC, was initially registered and Section 307 IPC was added later on. During investigation, accused-Amit Kumar, Virender Singh, Dayanand, Dharam Raj, Ram Dayal, Rajinder Singh and Mohinder Singh were arrested, whereas Vikas, Raj Kumar and Nirmal were found innocent and accordingly, the charge-sheet was filed.

The Hon'ble Supreme Court in Shiv Prakash Mishra Vs. State

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of Uttar Pradesh and another 2019 (5) R.C.R. (Criminal) 946, has held as under:

“8. Before considering the merits of the contention, it is necessary to refer to [Section 319 Cr.P.C., 1973](#) which reads as under:-

“319. 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.

.....

(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 the 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.”

By reading of [Section 319 Cr.P.C., 1973](#) it is clear that the power under [Section 319 Cr.P.C., 1973](#) can be exercised by the trial court at any stage during trial to summon any person as an accused to face the trial if it appears from the evidence that such person has committed any offence for which such person could be tried together with the accused.

9. The standard of proof employed for summoning a person as an accused person under [Section 319 Cr.P.C., 1973](#) is higher than the standard of proof employed for framing a charge against the accused person. The power under [Section 319 Cr.P.C., 1973](#) should be exercised sparingly. As held in [Kailash v. State of Rajasthan and another \(2008\) 14 SCC 51](#), “the power of summoning an additional accused under [Section 319 Cr.P.C.](#) should be exercised sparingly. The key words in

Section are “it appears from the evidence”.... “any person”.... “has committed any offence”. It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, the discretion under [Section 319 Cr.P.C.](#) would be used by the court.”

10. *As held by the Constitution Bench in para (105) in Hardeep Singh, the power under [Section 319 Cr.P.C., 1973](#) is discretionary and is to be exercised sparingly which reads as under:-*

“105. Power under [Section 319 Cr.P.C., 1973](#) is a discretionary and an extraordinary 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.

106. 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 un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under [Section 319 Cr.P.C., 1973](#). In [Section 319 Cr.P.C., 1973](#) the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” is clear from the words “for which such person could be tried together with the accused”. The words used are not “for which such person could be convicted”. There is, therefore, no scope for the court acting under [Section 319 Cr.P.C., 1973](#) to form any opinion as to the guilt of the accused.”

11. *The above view was followed in Brijendra Singh as under:-*

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“13. In order to answer the question, some of the principles enunciated in Hardeep Singh case (2014) 3 SCC 92 may be recapitulated: However, since it is a discretionary power given to the court under [Section 319 Cr.P.C., 1973](#) and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.”

I have heard the learned counsel for the parties as well as the learned State counsel and with their able assistance, have gone through the paper-book.

Since the complainant had specifically named Vikas son of Dayanand and stated that Vikas had given sugarcane cutter blow on the head of Raghubir Singh, father of Ashok Kumar, complainant, petitioner No.3. Thus, vide order dated 24.08.2018, Vikas has been summoned as additional accused.

Learned counsel for the petitioner has drawn the attention of this Court towards the statement of PW-2, corroborating the FIR reproduced in para No.6 of the petition which reads as under:-

“On 19.12.2016 at about 7.00/7.15 P.M. we were present in our home. Dharam Raj accused came in front of our house with Tractor-Trolley laden with sugarcane crop. Virender and Rajinder both sons of Dharam Raj, Dayanand and his sons Vikas and Amit, Ram Dayal son of Ronki Ram and his son Mohinder Singh, Nirmal Singh son of Ram Krishan and his nephew Raj Kumar son of Satpal Singh were accompanying above said Dharam Raj. All the accused armed with iron rods,

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gandasi, lathis, sugarcane cutter and sickles. All the accused entered our house after being exhorted by Dharam Raj to the effect that all of them are present in the house and they be taught a lesson. All the accused gave blows with their respective weapons on the windows and doors of our house and damaged the same. The window panes were also broken. xxxxxxxxxxxx”

Learned counsel for the petitioners has submitted that complainant-injured had specifically named respondents No.2 and 3 in the FIR and while in witness-box as PW 2 Ashok Kumar has categorically defined the role in the commission of offence, so there is sufficient evidence on record to summon them being positive direct version that respondents No.2 and 3 had attacked and inflicted injuries.

Learned State counsel has also stated that the police knowingly and malafidely had not charge-sheeted respondents No.2 and 3 though they were named in the FIR and PW 2 complainant/injured, Ashok Kumar had specifically defined their roles.

Per contra, learned counsel for respondents No.2 and 3 has vehemently submitted that during investigation, it was found that respondents No.2 and 3 were not involved in the incident and, therefore, charge-sheet was filed against other accused. He further argued that on 09.01.2017, investigation of the case was conducted by DSP Shahbad and during investigation/verification of the case, a cross-case was made out under Section 427 IPC and respondents No.2 and 3 were found to be innocent.

In the present case, Vikas has rightly been summoned to face the trial as an additional accused. So far as respondents No.2 and 3 are

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concerned, the lower Court has rightly applied the test requiring much stronger evidence than mere probability of complicity and more than a *prima facie* strong evidence is required than at the time of framing of the charge.

To my mind, in the absence of any strong evidence, the lower Court has rightly refrained itself from exercising the powers under Section 319 Cr.P.C. Three Deputy Superintendents of Police i.e. DSP Shahbad, DSP Pehowa and another DSP Pehowa found respondents No.2 and 3 innocent.

As no specific role has been attributed to respondents No.2 and 3 nor any injury has been attributed to them, on any person and there being no extraordinary circumstance to summon respondents No.2 and 3, the discretionary power was rightly exercised by the lower Court.

In the present case, there is no material disclosing complicity of respondents No.2 and 3 in the commission of offence in inquiry or in the statement of PW 2 complainant. Thus *stricto sensu*, Section 319 Cr.P.C. cannot be invoked in the present case. I do not find that the order passed by the lower Court, suffers from any patent illegality.

Therefore, finding no merit in the present petition, the same is dismissed.

16.01.2020
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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