

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

CRR-3780-2018

Date of Decision: 09.09.2020

Kamlesh

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. A.S. Cheema, Advocate, for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

Mr. Suvir Sidhu, Advocate,
for respondent Nos. 2 to 6.

None for respondent No.7.

HARNARESH SINGH GILL, J.

Case was taken up for hearing through video conferencing.

The present revision petition is directed against the order dated 25.09.2018 passed by the learned Additional Sessions Judge, Kaithal, whereby an application under Section 319 Cr.P.C., filed by petitioner-complainant, Kamlesh wife of Dalip (deceased) and mother of Ankit (deceased), through Public Prosecutor, for summoning respondent Nos. 2 to 7, namely, Neeraj, Uday, Jaswinder, Ankush, Ratna and Surinder, as additional accused, was dismissed.

As would emerge from the facts on record, complainant-Kamlesh got registered FIR No.385 dated

06.11.2017, under Sections 148, 149, 302 and 120-B IPC and Section 25 of the Arms Act, 1954, Police Station Pundri Kaithal.

While appearing before the trial Court as PW1, the complainant made a specific assertion that on 05.11.2017 at about 5.30 p.m., she had left the courtyard after milching the cattle; that when her husband-Dalip and son-Ankit, who had been on their motor-cycle and having buckets of milk, reached near the school of the village, eight persons sitting on the school wall, had jumped and encircled her husband and son; that within her view, Uday had caught hold of her husband and Jaswinder had caught hold of Ankit; that Neeraj and Ankush had thrown chilli powder in their eyes; that Vikram alongwith Naresh had given knife blows on the chest, stomach and arm of Ankit and Dalip, and that upon raising an alarm, all the assailants had fled away from the spot. Dalip and Ankit were declared brought dead.

During investigation, statements of the witnesses under Section 161 Cr.P.C. were recorded. Rinku son of Sher Singh, Vikram son of Ajit Singh and Balwinder Singh @ Billu son of Parwara also got their statements recorded that because of holiday on 05.11.2017, they alongwith other boys of village had been playing volleyball in the ground; that Vikram, Naresh, Neeraj, Uday, Jaswinder, Ankush, Ratna and Surinder were sitting on the boundary wall of the school adjoining the playground and that they had seen Ratna and Surinder raise a *lalkara*.

In the present case, further investigation was conducted by the concerned D.S.P. and as per the report dated 04.03.2019, running into 21 pages, it was concluded that

Neeraj, Uday, Jaswinder, Ankush, Ratna and Surinder were innocent. The findings given in the inquiry report are based on the call details and the statements recorded.

Learned counsel for the petitioner has submitted that the accused, who have been given a clean-chit, had been specifically named in the above-noted FIR as well as in the statements under Section 161 Cr.P.C. got recorded by Rinku, Vikram and Balwinder @ Billu. He further submitted that the complainant specifically stated that when the accused had attacked her husband and son, she had seen the entire occurrence, while following them on foot.

Learned counsel has further submitted that the report of the concerned DSP is liable to be discarded as it is unbelievable that two accused had done to death two able-bodied persons with knives. It was also pointed out by the learned counsel that the inquiry report was based on the tower location of the mobiles of the accused and even as per the tower location, the accused declared as innocent, had been found to be near the place of occurrence and there was no evidence before the inquiry officer to declare respondents No.2 to 7 as innocent, without taking into consideration that, prima-facie, and even beyond it, a case is made out against them.

Learned counsel has further contended that even vide impugned order dated 25.09.2018, the trial Court has simply mentioned one line that the version put forward by the complainant regarding the occurrence having taken place in a mathematical manner, is highly improbable. The said finding is patently illegal and has been recorded without even discussing the merits of the case. The statement of the complainant and the

statements of the independent witnesses recorded under Section 161 Cr.P.C., which are part of challan, have also been ignored by the trial Court while passing the impugned order.

In support of his contentions, the learned counsel for the petitioner has relied upon the judgment rendered by the Hon'ble Supreme Court in Hardeep Singh Vs. State of Punjab and others (2014) 3 SCC 92, wherein it has been held as under:-

"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.”

Per contra, learned counsel for respondents No.2 to 6 has submitted that in the present case, the alleged eye-witnesses, namely, Vikram, Balwinder and Rinku, are interested witnesses as they are the close relations of Dalip Singh.

Learned counsel for respondents No.2 to 6 has further submitted that the statements recorded under Section 161 Cr.P.C. are verbatim the same which indicate that the prosecution agency had taken signatures of Rinku, Vikram and Balwinder on blank papers and jotted down the version thereon, of their own. Moreover, the complainant has tried to involve all the family members of Jagram. Respondent No.6 and respondents No.2 to 5 are the son and grandsons of Jagram.

The learned counsel for respondents No.2 to 6 has further argued that as per the FSL report, no chilli powder had been detected and Uday, Jaswinder, Ankush and Neeraj had rightly been declared innocent by the inquiry officer and the application under Section 319 Cr.P.C. had rightly been dismissed. In support of his contentions, he relied upon a judgment rendered by the Hon'ble Supreme Court in Periyasami and Ors. Vs. S. Nallasamy, 2019(2) R.C.R. (Criminal) 556, wherein it has been held as under:-

“13. In the statements recorded under Section 161 of the Code during the course of investigation, the Complainant and his witnesses have not disclosed any other name except the 11 persons named in the FIR. Thus, the Complainant has sought to cast net wide so as to include numerous other persons while moving an application under Section 319 of the Code without there being primary evidence about their role in house trespass or of threatening the Complainant. Large number of people will not come to the house of the Complainant and would return without causing any injury as they were said to be armed with weapons like crowbar, knife and ripper etc.

14. In the First Information Report or in the statements recorded under Section 161 of the Code, the names of the appellants or any other description have not been given so as to identify them. The allegations in the FIR are vague and can be used any time to include any person in the absence of description in the First Information Report to identify such person. There is no assertion in respect of the villages to which the additional accused belong. Therefore, there is no strong or cogent evidence to make the appellants stand the trial for the offences under Sections 147, 448, 294(b) and 506 of IPC in view of the judgment in Hardeep Singh case (supra). The additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused.”

I have heard learned counsel for the petitioner, learned State counsel and the learned counsel appearing for respondents No.2 to 6, and with their able assistance, gone

through the case file and documents on record. None has, however, appeared for respondent No.7.

Before proceeding further, it would be appropriate to reproduce Section 319 Cr.P.C. 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.

(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 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.”

A bare perusal of Section 319 Cr.P.C. shows that it allows the Court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, is necessarily not to be an accused already facing trial. He can either be a person named in Column No.2 of the charge-sheet filed under Section 173 Cr.P.C. or a person whose name has been disclosed before the Court trying the offence. He has to be a person whose

complicity may be indicated and connected with the commission of the offence.

In the present case, the complainant in her statement on the basis of which the above-noted FIR had been registered, specifically mentioned the names and roles of respondents No.2 to 7 to the effect that Ratna and Surinder had raised *lalkara*, whereas Uday had caught hold of Dalip (since deceased), Jaswinder had caught hold of Ankit (since deceased) and Neeraj alongwith Ankush had thrown the chilli powder on the deceased. During investigation, Rinku, Vikram and Balwinder @ Billu had got their statements recorded specifically naming respondents No.2 to 7. Thereafter, vide inquiry report dated 04.03.2019, the concerned DSP had found respondents No.2 to 7 as innocent. The inquiry report is based on the statements of both the parties as also the mobile tower location. Though in their statements, respondents No.2 to 7 have denied their involvement, yet they were present in the village.

This Court is conscious of the fact that power under Section 319 Cr.P.C., to arraign an accused is to be exercised sparingly and where there is strong and cogent evidence, but the Court is duty bound to give due weightage to the evidence collected and the statements recorded at the time of the registration of the FIR, during investigation and during trial. In the instant case, there is enough prima-facie evidence to summon respondents No.2 to 7 as additional accused, to face the trial.

In view of the above, the present petition is allowed and the impugned order dated 25.09.2018 is set aside. As a consequence thereof, the application under Section 319 Cr.P.C. filed by the petitioner-complainant is allowed and respondent Nos. 2 to 7 are ordered to be summoned to face the trial as additional accused. As the said respondents had been declared as innocent during the inquiry conducted by the police, the said respondents are directed to appear before the trial Court on 28.09.2020 and upon doing so, they shall be released on bail by the trial Court, on their furnishing adequate surety and bail bonds.

September 09, 2020

parveen kumar/ds

(HARNARESH SINGH GILL)
JUDGE

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