

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

CRR-1331-2020

Date of Decision: 23.12.2020

Manoj alias Parveen and anotherPetitioners

Versus

State of Haryana and another Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

...
(through video conferencing)

Present: Mr. Rajesh Bhateja, Advocate
 for the petitioners.

...

MANJARI NEHRU KAUL, J. (Oral)

The instant revision petition has been filed to impugn the order dated 04.12.2020 passed by the learned trial Court vide which the revisionists-petitioners have been summoned under Section 319 Cr.P.C. to face trial. The learned counsel has contended that a perusal of the FIR in question clearly reveals that the revisionists have been falsely implicated in the case in hand as another FIR No.57 dated 23.03.2019 under Sections 323, 341, 506, 34 IPC with respect to another occurrence already stood registered against both the petitioners at Police Station Israna, District Panipat, hence, it could not be digested that the petitioners could have also been involved in the occurrence in question. The learned counsel has further referred to the FSL report (Annexure P-6) wherein it has been stated that no visible external injury was seen over any part of the dead body. It has been vehemently urged that the Investigating Agency had rightly found both the

revisionists innocent and placed them in Column No.2. The learned counsel has also laid a challenge to having been summoned to face trial under Section 319 Cr.P.C. only on the basis of examination-in-chief of the complainant without even waiting as much as for his cross-examination.

I have heard learned counsel at length and also perused all the relevant material annexed with the revision petition.

The power to summon a person under Section 319 Cr.P.C. should not be exercised in a routine and mechanical manner and it should be exercised only sparingly. However, if the evidence on record obliquely hints at the involvement of a person who has not been sent up for trial by the investigating agency, the power under Section 319 Cr.P.C. can be exercised by the court to summon such person not only on an application filed under Section 319 Cr.P.C. but also suo motu if the court is *prima facie* satisfied on an evaluation of material and other evidence which has come to the fore during the course of trial, that the summoning of a person as an accused under Section 319 Cr.P.C. is necessitated.

Coming to the case in hand, the learned counsel laid a great deal of stress on the fact that the Investigating Agency had rightly found them innocent and placed them in column No.2. It needs to be emphasized that merely because the Investigating Agency found the revisionists innocent during the investigation would not be a ground to not summon them under Section 319 Cr.P.C. as it would virtually amount to the courts becoming subservient to the investigating agency and the very object of the enactment of Section 319 Cr.P.C. would be defeated.

Coming to the next limb of submission of the lower court that the trial court erred in summoning the revisionists/petitioners only on the

basis of the examination-in-chief of the complainant PW4 Karam Singh, without as much as waiting for his cross-examination is devoid of merit.

It would be apposite to reproduce Section 319 Cr.P.C. as under:-

“Section 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 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 subsection (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 reading of Section 319 Cr.P.C. makes it abundantly clear that the power to summon a person under Section 319 Cr.P.C. can be exercised at any stage of the case. The term 'evidence' appearing in Section 319 (1) Cr.P.C. would include within its ambit all such evidence which is led before the court during the trial and would thus in no way be construed to imply that examination-in-chief without cross-examination would be beyond the purview of the term 'evidence'. Hence, the examination-in-chief

of PW4 Karam Singh would be deemed to be evidence for which the trial court cannot be faulted with. The Supreme Court in ***Hardeep Singh v. State of Punjab and others*** 2014 Criminal Law Journal 1118 has held that “power under Section 319 Cr.P.C. can be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said evidence is tested on cross-examination, for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.”

Still further, a perusal of the FIR which was registered promptly reveals that both the revisionists/petitioners were specifically named in it, and specific attributions were spelt out qua them in the occurrence in question. A perusal of the deposition of the complainant PW4 Karam Singh reveals that he reiterated the allegations levelled against the revisionists/petitioners during his examination-in-chief.

As a sequel to the above discussion, this court is satisfied that the impugned order dated 04.12.2020 is a well reasoned one and petitioners should be tried for offences under Sections 323, 341, 506, 34 IPC along with the other accused.

Dismissed.

(MANJARI NEHRU KAUL)
JUDGE

23.12.2020
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Note: Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No