

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

**CRM-16773-2021 in/and
CRR-620 of 2021 (O&M)
Date of Decision:29.11.2021**

SARABJIT SINGH

... Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

...Respondents

2.

**CRM-16777-2021 in/and
CRR-621 of 2021(O&M)**

BALWANT SINGH

... Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

...Respondents

3.

**CRM-16876-2021 in/and
CRR-622 of 2021(O&M)**

JASWINDER SINGH @ BINDER

... Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

...Respondents

4.

CRR-689 of 2021

JAGJIT SINGH @ JAGGA

... Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

...Respondents

5.

CRR-700 of 2021

AMANDEEP VERMA @ AMAN VERMA AND ANR

... Petitioners

VERSUS

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Bipan Ghai, Senior Advocate, with
Mr. Prabhdeep Singh Bindra, Advocate, for the petitioner(s)
in CRR No.620, 621 and 622 of 2021.

Mr. Laghuinder Singh Sekhon, Advocate,
for the petitioner in CRR No.689 of 2021.

Mr. Rahul Rampal, Advocate,
for the petitioners in CRR No.700 of 2021.

Mr. Sandeep Singh Deol, DAG, Punjab.

Mr. Navkiran Singh, Advocate and
Mr. Abhishek Lubana, Advocate for respondent No.2.
in CRR Nos. 689 and 700 of 2021.

Harsimran Singh Sethi, J.(Oral)

This common order shall dispose off petitions, details of which have been given in the heading, as all the petitions arise out of the same impugned order dated 22.03.2021. These petitions have been filed by different individuals, who have been summoned as additional accused to face trial by

allowing the application filed by the prosecution under Section 319 of the Cr.P.C.

Before advertng to the grounds being raised in these petitions to challenge the order by which petitioners have been summoned to face the trial as additional accused, certain facts are necessary to be enumerated which are as under:-

A complaint was made by Prem Singh on 20.04.2017 on the basis of which, FIR No.33 dated 20.04.2017 under Sections 302, 307, 427, 148, 149 IPC, 25/27 of Arms Act, 1959 and Section 3(2) of SC & ST Act, 1989 was registered at Police Station Jhunir, Mansa, wherein it was alleged that the complainant Prem Singh as well as one Baljinder Ram @ Binda had entered into a contract for washing solar plates in the solar plant situated in village Khiali Chahlanwali. As per the allegations in the FIR, one Sewak Singh, who was a resident of village Baran, had threatened and coerced complainant Prem Singh and Baljinder Ram @ Binda not to execute the said work of washing solar plates. It was further alleged in the FIR that on 19.04.2017, at about 6:00 p.m. the complainant Prem Singh alongwith his brother Tarsem Singh and his son Sukhwinder Singh visited the solar plant for washing solar plates in their Indica Car bearing registration No.DL-3CW-4009 and after completing their work while returning back and proceeding towards their car, a number of vehicles including a Swift Car bearing No.HR-99UK-1410 as well as a Bolero, a Xylo and a Scorpio arrived there and the person driving the Swift car rammed the same into the car of the complainant, thereby damaging the same. Thereafter, Sewak Singh, Jagga Singh, another person also named Jagga Singh,

Binder Singh, Satnam Singh, Aman Sandhu, Deep Sandhu, Aman Verma, Sarabjit Singh, Balwant Singh, Gurpal Singh and 6-7 other unknown persons armed with various weapons such as pistol, gun, rods, hand pump, lathies etc. came out of their respective vehicles and Sewak Singh, Jagga Singh r/o Sahnewal, Jagga Singh r/o Burj and Binder Singh fired gun shots towards the complainant and his son and the other accused persons ransacked their car. Thereafter, on an alarm raised by complainant, the accused persons fled away. Thereafter, Tarsem Singh took both complainant and his son Sukhwinder Singh to the Government Hospital, Mansa but Sukhwinder Singh s/o Prem Singh unfortunately succumbed to his injuries on their way to the hospital and the complainant Prem Singh was eventually treated for the gun shot injuries.

After the complaint filed by complainant-Prem Singh, a cross-case having DDR No.19 dated 21.04.2017 at Police Station Jhunir, District Mansa was also filed by other side against complainant Prem Singh and other persons namely Amritpal Singh, Swaranjit Singh, Jatinder Kumar, Balwinder Singh and Bohar Singh. Some of the accused in the cross-case were found innocent by the Investigating Agency while submitting the challan. Thereafter, during trial of the cross case, an application was filed by the prosecution under Section 319 Cr.P.C for summoning the accused, who were found innocent during the investigation of the said DDR, so as to face trial. The said application was dismissed by the trial Court vide order dated 20.02.2019. Order passed by the trial Court dated 20.02.2019 was challenged before this Court in CRR-647-2019. The said criminal revision petition was allowed by a Coordinate Bench of this Court on 15.07.2019 with the following observations:-

“Learned trial Court, without considering the evidence, dismissed the application by simply stating that complainant could not prove that above-said accused were involved in the commission of the offence, which reasoning is not as per evidence and law. It is admitted at the time of arguments that names of above-said accused are mentioned in the FIR and also in the statements recorded in the Court and active role has been attributed to them by the PWs. Mere fact that during the enquiry, the police has not challaned these persons, is no ground to dismiss the application. Again, the reasoning given by the trial Court that there are only vague allegations, is also not as per record and evidence. It is argued that specific role has been attributed and in no way, it can be held that vague allegations have been levelled. Learned State counsel as well as learned counsel for respondents No.3 to 6 could not point out as to how the allegations can be held as vague.

The perusal of the record shows that findings of learned trial Court are perverse against the evidence and law. In no way, the allegations can be held as vague nor it can be held that there is nothing to show the involvement of the persons sought to be summoned as additional accused. The standard of proof for summoning additional accused is somewhat more than prima facie case. In the present case, three PWs including complainant and injured witnesses, have deposed regarding active participation of the above-said additional accused.

In view of the above discussion, I find that the impugned order dated 20.02.2019 passed by learned Addl. Sessions Judge, Mansa, is illegal and the same is set aside.

Finding merit in the present petition, the same is allowed. Application under Section 319 Cr.P.C. stands accepted qua summoning Swaranjit Singh alias Kala, Jatinder Kumar Jain alias Bobby Jain, Balwinder Singh alias Binder and Bohar Singh.”

The order passed by the Coordinate Bench of this Court on 15.07.2019 was assailed before the Hon'ble Supreme Court of India in SLP (Crl.) No.11658/2019, which was dismissed by the Hon'ble Supreme Court of India vide order dated 31.01.2020, which is as under:-

“We decline to interfere in this Special Leave Petition. The Special Leave Petition is accordingly dismissed.

However, the dismissal of this special leave petition will be no impediment for the petitioner to raise all contentions as may be available before the trial Court, that be decided on its own merits in accordance with law.

In view of the above, pending application(s) shall stand disposed of.

Similarly in the present FIR i.e. No.33 dated 20.04.2017, the Investigating Agency after completing the investigation presented a challan only against accused Rajbhupinder Singh @ Sewak, Jagtar Singh @ Jagga resident of village Burj, Gurpal Singh and Satnam Singh. Accused Lachman Singh and Mehma Singh were challaned under the Arms Act whereas, the other accused, who are the petitioners in these petitions, were found innocent by the police while submitting the challan.

After the charges were framed, the prosecution examined the injured Prem Singh as well as the eye witness Tarsem Singh alongwith the doctors who either treated the injured and conducted the post mortem of the deceased Sukhwinder Singh.

Keeping in view the testimonies of the injured/complainant Prem Singh as well as the eye witness Tarsem Singh, the prosecution moved an application under Section 319 Cr.P.C. for summoning the petitioners to face the trial as additional accused, who though were initially named in the FIR but were later found innocent by the police and were not challaned.

The trial Court vide order dated 22.03.2021 decided the said application under Section 319 Cr.P.C and found that there is prima facie evidence, which has come on record, which allowed the trial Court to form an opinion that accused Jagga Singh s/o Bhura Singh, Binder Singh s/o Kulwant

Singh, Aman @ Sukhman s/o Buta Singh, Deep Sandhu s/o Tara Singh, Sarbjit Singh s/o Tejwant Singh, Balwant Singh s/o Gurmail Singh Sarpanch and Aman Verma s/o Ram Pansari are required to be summoned as additional accused to face the trial, whereas the plea of the prosecution for summoning Harnek Singh @ Aman Sarpanch was declined. The said order passed by the trial Court dated 22.03.2021 is under challenge in these bunch of petitions.

I have heard learned counsel for the parties and have gone through the records with their able assistance.

The challenge in these petitions is to summoning of petitioners as additional accused to face trial as envisaged under Section 319 Cr.P.C. The law on the said issue has already been settled by the Hon'ble Supreme Court in a Constitutional Bench judgement in **Criminal Appeal No.1750 of 2008** titled as '**Hardeep Singh Vs. State of Punjab and others**' decided on 10.01.2014. Hon'ble Supreme Court of India through the above mentioned judgment has laid down the guidelines, which are to be kept in mind by the trial Court while passing orders on an application moved by the prosecution, seeking summoning of additional accused to face trial under Section 319 of the Cr.P.C. The parameters, which have been summed up by the Hon'ble Supreme Court of India in Hardeep Singh (surpa) are 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 chargesheet. 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 chargesheeted 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 ”

From a bare perusal of the order passed by the Hon'ble Supreme Court of India in **Hardeep Singh's case (supra)**, it is clear that while passing an order on an application filed under Section 319 of the Cr.P.C., the evidence which has come on record during the investigation as well as during the trial, can be taken into consideration so as to form an opinion as to whether there is prima facie evidence to summon a particular individual as an additional accused to face trial or not. The said power extended to the trial Court being extraordinary, should be sparingly used only in the cases where it is so warranted. The bench mark required for arriving at an opinion is that the evidence on record is more than prima facie as required at the time of framing of charges but short of satisfaction that the evidence so already on record, if goes un rebutted, would lead to conviction.

By relying upon the judgment in **Hardeep Singh's case (supra)**,

Hon'ble Supreme Court of India in **Criminal Appeal No.763 of 2017** titled '**Brijendra Singh and others versus State of Rajasthan**', decided on 27.04.2017, held that while exercising the power under Section 319 of the Cr.P.C, the trial Court should keep in mind that the evidence which has come on record should be strong and cogent, indicating that the accused so being summoned may be guilty of committing the crime and further that the findings of the Investigating Agency, which are based upon cogent evidence, should not be overruled in a casual manner without there being a valid justification for doing so.

Again, the Hon'ble Supreme Court of India in **Criminal Appeal No.368 of 2018** titled '**Virendra Singh versus State of Madhya Pradesh and another**' decided on 04.02.2019, held that where there is enough evidence on record before the trial Court to shake the alibi of the accused, though the said alibi was accepted by the Investigating Agency, the parameters laid down in **Hardeep Singh's case (supra)** and **Brijendra Singh's case (supra)** stands fulfilled, so as to summon an additional accused to face trial. Relevant paras of Virendra Singh case (supra) is as under:-

Crl. Appeal No.368 of 2018

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3. According to Mr. A.K. Srivastava, learned senior counsel, who appears on behalf of the respondent NO.2, our order dated 17.11.2014 had made it clear that an application under Section 319 Cr.P.C to add accused-Manoj Singh could only be if there was something new that is forthcoming from the evidence and not otherwise.

4. We have perused that statement of P.W. NOs. 3, 4 & 5. Each one of these witnesses has specifically implicated Manoj Singh stating that he fired shots at the deceased. In addition, PW-4 has specifically stated that one could reach Gwalior if one passed from Dong within a period

of 10-15 minutes. The same thing is stated by PW-5 Dalip Singh. This would shake Manoj's alibi that he was not at the place where the incident took place because it is clear that he was at the other place half an hour before the said incident.

*5 We have also perused the judgment of this Court in **Brijendra Singh and other v. State of Rajasthan (2017) 7 SCC 706** (para 13) and the Constitution Bench judgment of this Court in **Hardeep Singh v. State of Punjab & others (2014) 3 SC 92** (para 106) and are satisfied that this is a case which falls clearly within the parameters laid down in the said judgments.*

Prayer of the petitioners in these petitions is to be considered as per the law stated hereinbefore so as to ascertain whether impugned order dated 22.03.2021 is in conformity with law or not.

The petitioners in these petitions have raised the plea that impugned order dated 22.03.2021 needs interference by this Court by contending that there is not enough material on record so as to form a prima facie view to summon the petitioners as additional accused to face trial. It is a conceded position between the parties that the trial Court while considering an application filed by the prosecution under Section 319 Cr.P.C has the power to summon additional accused if the trial Court forms an opinion that there exists enough material on record for summoning additional accused.

This Court is now required to adjudicate, as to whether, keeping in view the facts and circumstances of this case there was enough evidence on record to second the opinion formed by the trial Court to summon the petitioners as additional accused in the present case.

Now advertng to the arguments raised by the petitioners in these petitions, learned Senior counsel appearing in CRR Nos.620, 621 and 622 of 2021 argues that the findings recorded by the Investigating Agency have been

ignored by the trial Court while allowing plea of the prosecution to summon the petitioners as additional accused and that too without recording any cogent evidence contrary to the findings of the Investigating Agency. Learned Senior counsel further submits that the relevant portion of the testimony of the complainant recorded on 19.01.2021 wherein, it has come on record that rather than the petitioners, some other persons have been named as the perpetrators of the crime by the other son of the complainant namely Satnam Singh has been ignored by the trial Court while passing impugned order dated 22.03.2021. It is further argued that the car of the complainant, which was alleged to have been vandalized as per the testimony of the complainant was not damaged and evidence qua this fact is also placed on record during the investigation, hence, there is no material on record to lead the trial Court to form an opinion that there exist prima facie material on record to summon the petitioners as additional accused to face the trial.

The learned counsel appearing in CRR No.700 of 2021 titled as 'Amandeep Verma and another versus State of Punjab and another' submits that there was an alibi of the petitioners in the said petition as petitioner No.2 was stated to be present in a hotel at Chandigarh at the time of occurrence of the incident and this fact/alibi was taken into consideration by the Investigating Agency to declare the petitioners innocent of the allegations alleged. Learned senior counsel further argues that the impugned order passed by the trial Court dated 22.03.2021 has not taken into consideration the above stated relevant facts, hence the impugned order is liable to be set aside on the said ground itself.

The learned counsel appearing in CRR No.689 of 2021 titled as 'Jagjit Singh @ Jagga vs. State of Punjab and another' submits that the petitioner in the said petition was rightly declared innocent by the Investigating Agency, keeping in view the mobile tower location of the petitioner as well as the CCTV footage of Bhai Vir Singh Hospital, Punjabi University, Patiala, where the said petitioner was present at the time of occurrence of the incident. The learned counsel submits that the said factual position has not been taken into consideration by the trial Court while passing the impugned order.

The learned counsel appearing on behalf of complainant submits that the names of the petitioners, who have been summoned to face trial as additional accused, figures in the FIR with clear allegations. The police, without appreciating the correct facts, did not challan them despite there being prima facie evidence to prove the allegations against them. However, at the time of recording testimony by the trial Court, the name of the petitioners have come again with specific allegations against them. Therefore, petitioners have been rightly summoned as additional accused to face trial.

The learned State counsel submits that sufficient evidence has already come on record to form an opinion that petitioners are liable to be summoned as additional accused to face trial. As per learned State counsel not only the allegations recorded in the FIR have been corroborated by the material witnesses in their testimonies but those allegations as well as the testimonies are also corroborated by the evidence collected by Investigating Agency. Learned State counsel further contends that use of the fire arm, as being alleged in the FIR and also being reiterated in the testimonies of the complainant as well as

his brother Tarsem Singh, who is the eye witness to the alleged incident also stands corroborated as empty shells were found from the spot where the alleged crime took place. Learned State counsel argues that the contention of the learned Senior counsel for the petitioners that the order passed by the trial Court dated 22.03.2021 is without appreciating material facts and evidence is incorrect and, therefore, is liable to be rejected.

One of the argument which has been raised by the learned counsel for the petitioners is that during the testimony of the complainant namely, Prem Singh and that of the eye witness Tarsem Singh, a video clip was produced wherein, it was alleged that another son of the complainant Prem Singh namely Satnam Singh was heard saying that someone else other than the petitioners, have killed his brother and has injured his father, which fact alone is good enough to deny the prayer of the prosecution to summon the petitioners as additional accused to face the trial. Learned counsel for the petitioners submits the said portion of the testimony of the material witnesses have not been appreciated by the trial Court in a correct perspective while passing the impugned order dated 22.03.2021.

Though, this Court is not required to make observations about the said aspect at this stage as the complete evidence is yet to be led by the parties concerned before the trial Court, however, since the argument has been pressed by the learned counsel for the petitioners, this Court is of the view that said argument of the petitioners has rightly been decided by the trial Court by holding that the video clip which is being relied upon by the petitioners is yet to be proved on record to be genuine or not and further, the said son of the

complainant was not present at the site of the occurrence of the alleged crime. Therefore, the said video clip cannot come to the rescue of the petitioners as of now i.e. while deciding the application filed under Section 319 Cr.P.C.

Another argument of the learned counsel appearing on behalf of the petitioners which is that the allegations in the FIR already stood enquired by the Investigating Agency in which the petitioners were found innocent, cannot be of any avail for the reason that findings qua certain aspects, which have been noticed by the trial Court in the impugned order are found to be missing in the investigation report, which would have been necessary so as to arrive at a conclusion that the petitioners were innocent. Besides this, nothing has been pointed out by the learned counsel for the petitioner regarding the allegations that the petitioners were alleged to have been carrying as well as using firearms. Further this fact also stands corroborated as during the investigation empty shells were found at the site of the alleged crime. Apart from this, the alibi being claimed by the petitioner in Criminal Revision No.689 of 2021 that they were in Punjabi University Patiala placing reliance upon the CCTV Footage of a particular place, has been dealt with by the trial Court in a proper manner by recording a finding that as of now nothing is clear about the time and the date of the said CCTV footage, which fact alone shakes the alibi of the accused so as to summon them to face trial.

With regard to the arguments raised by the learned counsel for the petitioners in CRR-700-2021 that the petitioners therein were present in a hotel at Chandigarh at the time of occurrence of incident, the fact of which was ignored by the trial Court while passing the impugned order, it may be recorded

that only a receipt has been produced before the Investigating Agency to substantiate the said alibi and no CCTV footage or substantive evidence was produced either before the Investigating Agency or before the trial Court to claim innocence on the basis of the said alibi. The said receipt alone without any other corroborating evidence, cannot be taken as a ground at this stage and that too by ignoring other evidence, which has already come on record, to hold that petitioners in CRR-700-2021 were not present at the site of occurrence. Even otherwise, the trial Court is not holding the petitioners guilty as of now as they have only been summoned and the petitioners will be well within their right to prove their alibi by leading other cogent evidence. The said evidence, as of now is not sufficient especially, in view of the other evidence already on record.

From the record, it transpires that the police declared the petitioners innocent on the basis of the statements of certain residents of the area through which the presence of the petitioners at the site of incident, could not be verified. However, specific allegations alleged in FIR cannot be discarded unless and until the evidence brought on record supports the alibi presented by the petitioners. Specific reasons should have been mentioned to declare persons as innocent against whom allegations with regard of using weapons are attributed.

Learned counsel for the petitioners has also not been able to point out the reasons as to why the Investigating Agency's report suffering material discrepancies should not have been overruled by the trial Court while accepting the plea of the prosecution to summon the petitioners as additional accused.

With regard to the argument being raised by the learned senior counsel for the petitioners that the car, which was stated to have been vandalized by the accused, was not damaged to such an extent to show that the petitioners were guilty, it is submitted again at the cost of repetition that the witnesses already examined have stated that the front portion of the car was damaged and even the rear wind screen had cracks. Therefore, it cannot be said that the evidence collected during the investigation does not co-relate to the allegations though, the final opinion is to be arrived at by the trial Court only at the end of the trial after complete evidence is led by the parties concerned.

By applying the parameters laid down by Hon'ble Supreme Court of India in **Hardeep Singh's case (supra)**, **Brijendra Singh's case (supra)** and **Virendra Singh's case (supra)**, in the present case, this Court feels that the order passed by the trial Court summoning petitioners as additional accused needs no interference. The trial Court has dealt with all the aspects and that too, by giving appropriate reasons for arriving at a conclusion which, the learned counsel for the petitioners have not been able to refute by putting forward valid material facts and reasons. It is a conceded position that all the accused, who have been summoned now by the impugned order, were already named by the complainant in his complaint with specific allegations duly recorded in the FIR as well and thereafter in the testimony of the witnesses already examined. Thus, this Court comes to the conclusion that there is enough evidence on record to form an opinion to summon the petitioners as additional accused to face the trial.

Not only this, but in the present case, it is a conceded fact that the

name of the petitioners along with the weapons attributed to them finds mention in the FIR and even the acts attributed to them have been detailed in the FIR. The testimonies of the injured as well as the eye-witness reiterated the same allegations against the petitioners. A Coordinate Bench of this Court while allowing a similar plea in the cross-case while deciding CRR No.647-2019 held that once the allegations finds mention in the FIR and the same have been reiterated in the testimony of the material witnesses, mere fact that the police did not challan the accused, cannot be a ground not to summon them while accepting plea of the prosecution raised under Section 319 Cr.P.C. in the cross-case, which order has already been upheld by Hon'ble Supreme Court of India.

Learned Senior counsel appearing for the petitioners submits that a Coordinate Bench of this Court, while accepting the plea of the prosecution to summon additional accused to face trial in the cross-case, held that the allegations alleged by the complainant therein are not vague as enough material had already come on record to justify the summoning of the additional accused, however, in present case, the allegations are vague in nature.

On being asked, as to what allegations alleged in the FIR against the petitioners or the factum stated qua them in the testimonies of the material witnesses including that of complainant are vague, learned Senior counsel appearing for the petitioners pointed out that the allegations mentioned therein, have not been substantiated so far as per the evidence on record. The vague allegations and unsubstantiated allegations are two different things. Vague allegations means that nothing is clear from the allegations whereas, unsubstantiated allegations means that they are yet to be proved on the basis of

evidence. Whether the allegations alleged against an accused is substantiated or not, is to be seen at the end of the trial keeping in view the complete evidence, which will come on record and not at the stage when additional accused are to be summoned. At the time of summoning of additional accused under Section 319 Cr.P.C trial Court is only required to form an opinion that evidence on record at the stage is more than prima facie to summon additional accused.

The said ratio laid down by the Coordinate Bench of this Court while deciding CRR No.647-2019, relates to the same incident and also has been upheld by the Hon'ble Supreme Court of India. Furthermore, all the facts and circumstances which existed in the cross-case, do exist in the present case as well.

Learned counsels appearing for the petitioners have not been able to rebut the factual aspect that the name of the petitioners along with their acts and weapons do find mention in the FIR and again in the testimonies of the material witnesses i.e. complainant and eye-witness, which cannot be said to be vague hence, facts and circumstances which were found to be good enough to form a prima facie view to summon additional accused to face trial in the cross-case by a Coordinate Bench of this Court do exist in the present case as well.

That being so, there are no grounds to set aside the impugned order dated 22.03.2021, by which the petitioners have been summoned to face trial as additional accused. The petitioners cannot blow hot and cold in the same breath. It does not lie in the mouth of the petitioners to contend that reasons given by the trial Court are not good enough to allow the application under Section 319 Cr.P.C filed by prosecution, which is filed against them especially, when on the

same very reasons, a Coordinate Bench of this Court has allowed the application filed under Section 319 Cr.P.C to summon additional accused in their cross-case. If the arguments of the petitioners are to be accepted, it will mean that on the same incident, two different yardsticks are being applied for considering the same plea for summoning additional accused to face trial, which is not permissible. Hence, the impugned order dated 22.03.2021 passes the test laid down by the Coordinate Bench of this Court while allowing application under Section 319 Cr.P.C filed in the cross-case.

Keeping in view the above, no interference is called for by this Court in the impugned order dated 22.03.2021, by which the petitioners have been summoned to face trial as additional accused while allowing the application filed by the prosecution under Section 319 Cr.P.C.

Dismissed.

CRMs-16773; 16777 and 16876-2021

Keeping in view the fact that the main petitions have been rejected, no further orders are required to be passed in these applications and the same are disposed of as such.

November 29, 2021

aarti

(HARSIMRAN SINGH SETHI)
JUDGE

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