

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

I. CRR-400-2022 (O&M)

Reserved on : December 13, 2022

Date of Pronouncement : December 15, 2022

Dharam VirPetitioner

Vs.

State of Haryana ...Respondent

II. CRR-795-2022 (O&M)

Pawan Kumar @ Pawan ...Petitioner

Vs.

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Jai Vir Yadav, Senior Advocate with
Mr. Nitish Sharma, Advocate for the petitioner
(in CRR-400-2022)

Mr. S.K. Panwar, Advocate for the petitioner
(in CRR-795-2022)

Mr. Deepak Kumar Grewal, DAG, Haryana.

Mr. K.K. Saini, Advocate for the complainant.

ARVIND SINGH SANGWAN, J.

By this common judgment, both the above-mentioned
revision petitions, i.e. CRR-400-2022 and CRR-795-2022 shall be
decided together.

Prayer in the above mentioned petitions is for setting aside the order dated 17.12.2021 passed by the Additional Sessions Judge, Panchkula vide which application filed by the prosecution under Section 319 Cr.P.C. for summoning petitioners Dharam Vir and Pawan Kumar @ Pawan as additional accused to face trial with the two accused Naib Singh and Rambir @ Titu, who are already facing the trial, was allowed.

Brief facts of the case are that the FIR was registered with the allegations that on 24.12.2018 at around 6.47 p.m., when the complainant, who is a labourer, was going towards his cattle shed and reached near the house of Prem, Ranbir @ Titu, Naib, Dharambir and Pawan Kumar came there and gave 5-6 slaps on the back of his head. The complainant escaped from there and entered into the shop of one Hussain and called upon his nephew Sandeep who said that due to cold weather he is tying cattle inside. Ranbir @ Titu threw burning 'parali' upon him. Naib suddenly gave a blow with sharp weapon taking it from the hands of Ranbir @ Titu and caught hold both of the hands of the complainant. Ranbir @ Titu gave dattar blow on his forehead and then gave a blow on the hand of the complainant, when he raised hand in order to save himself. Pawan Kumar, Naib and Dharam Vir gave many fist blows on eyes and gave beatings to kill him. Sandeep @ Dipu, who was trying to save him also got injuries on the fingers of his left hand. On hearing the noise, many people gathered at the spot. All the four, by

conniving together, tried to kill the complainant with sharp weapon and tried to burn him and had done a deadly attack on him.

The police conducted the investigation, recorded the statement of the prosecution witnesses and ultimately submitted the challan against two persons, i.e. Naib Singh and Ranbir @ Titu, whereas the petitioners were kept in column No.2 and no challan was presented against them. Thereafter, charges were framed against the aforesaid two persons under Sections 323, 324, 326, 307, 435 and 34 IPC.

After examination-in-chief of PW1 Yashin Khan-victim was recorded, an application was moved under Section 319 Cr.P.C. for summoning the present petitioners as additional accused and the same stands allowed vide impugned order. The operative part of the order reads as under :-

"6. I have given my thoughtful consideration to the submissions advanced by learned Public Prosecutor assisted by learned counsel for complainant and have gone through the case file carefully and thoroughly.

7. Before advertng to the facts and evidence of the case, it is relevant to mention here that Section 319 Code of Criminal Procedure, 1973 does not permit to summon a person as additional accused merely because some allegations are levelled against him. Before a person can be summoned as an accused under Section 319 Cod or Criminal Procedure, 1973, it

is necessary for the Court to satisfy that it appears from the evidence that such person not being accused has committed any offence for which he can be tried together with the accused.

8. In Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623, the Hon'ble Supreme Court held that power under Section 319 of Code of Criminal Procedure, 1973 can be exercised by the Trial Court at any stage during the trial, i.e. before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the Trial Court finds that there is some 'evidence' against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. 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.

9. Now, question arises for determination is whether satisfaction as mandate under Section 319 Code of Criminal Procedure, 1973 can be recorded in facts and circumstances of the case.

10. It is apparent from the case file that present case was got registered by complainant Yashin Khan by making statement Ex.PB. In statement Ex.PB, complainant Yashin Khan levelled specific allegations against accused that on 24.12.2018 at about 6:47 PM, accused namely Tittu (daughter's son of Beeru), Naib (daughter's son of Swaran), Dharam Veer son of late Joginder Singh and Pawan Kumar son of Krishan, all residents of village Shamtu beaten him; accused Titu threw burning 'parali' upon him and gave blows with sharp edged weapon on his head; accused Naib, Dharam Veer and Pawan gave fist blows on his person in order to kill him.

11. Complainant Yashin when appeared in the witness box as PW1, he reiterated the allegations against all the accused as levelled in his statement Ex.PB. He categorically deposed that all the accused namely Titu @ Ranbir, Naib, Dharamvir and Pawan were present outside the house of Titu; they caught hold him and gave fist and slap blows; again when he along with Sandeep was going towards his cattle

shed, accused Titu threw burning 'parali' upon him; Dharamvir and Pawan gave blows on his leg; accused Naib was having a sharp edged weapon, who gave the same to accused Titu; accused Naib caught hold him and accused Titu gave him blow of that sharp weapon on his head.

Further accused Naib Singh and Ranbir @ Titu have also revealed involvement of proposed accused namely Dharmveer and Pawan in their disclosure statements.

12. In report under Section 173 Cr.P.C., it is simply mentioned that during investigation, Dharamveer son of Joginder and Pawan son of Krishan were not found involved in the present case. No material is produced with the challan, which may establish innocence of Dharamveer and Pawan."

13. In view of the above discussed facts and circumstances of the case, I find merit in the application in hand and same is allowed."

Learned Senior Counsel for the petitioners has argued that the trial Court was influenced with the fact that the two co-accused Naib Singh and Ranbir @ Titu have revealed involvement of the petitioners in their disclosure statements, which supported the prosecution version.

It is argued that at the stage under Section 319 Cr.P.C., Court can not look into the disclosure statement of the co-accused, which is a weak type of evidence. It is next argued that the disclosure

statement of the co-accused is in sharp contrast what is stated in the FIR.

Learned Senior Counsel has referred to the disclosure statement of the two co-accused, wherein it is stated that the petitioner Dharam Vir has an enmity with victim Yashin Khan on account of a previous dispute. However, neither in the FIR nor in examination-in-chief of PW1 this fact is stated by the victim himself that petitioner Dharam Vir was having any previous enmity with him. Learned Senior Counsel has further submitted that the approach of the trial Court in relying upon the disclosure statement is patently wrong and reliance is placed on the judgment of the Hon'ble Supreme Court in 2014(3) SCC 92 **Hardeep Singh Vs. State of Punjab and others**, wherein the following observations are made :-

"95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under [Section 319 Cr.PC](#), though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in [Vikas v. State of Rajasthan](#) [(2014) 3 SCC 321] , held that on the objective satisfaction of the court a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

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105. Power under [Section 319](#) Cr.PC 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.PC. In [Section 319](#) Cr.PC 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.PC to form any opinion as to the guilt of the accused."

Learned Senior Counsel has also submitted that subsequently in 2017 (3) RCR (Criminal) 374, **Brijindra Singh and others Vs. State of Rajasthan** and 2019 (1) RCR (Criminal) 1

Labhuji Amratji Thakor and others Vs. State of Gujarat and another, the ratio of law laid down in **Hardeep Singh's** case (*supra*) was reiterated and it is held that where the statement recorded during the trial Court is nothing more than the statement which is already there under Section 161 Cr.P.C., recorded at the time of investigation of the case same, is not much stronger evidence than mere possibility of their (petitioner's) complicity, which has come on record.

Learned Senior Counsel has further submitted that in order to record a satisfaction while summoning a person under Section 319 Cr.P.C., the Court has to apply a test, i.e. the evidence is more than *prima facie* case as exercised at the time of framing of the charge but short of satisfaction to an extent that the evidence if goes unrebutted would lead to conviction.

It is next argued that in the absence of any such evidence coming in the FIR or examination-in-chief of PW1 that petitioner Dharam Vir was having any previous enmity with the accused, no reliance could be placed on the disclosure statement of the co-accused, which is contrary to the FIR and PW1. Even as per the allegations in the FIR, it is alleged that the petitioners have given fist blows to the victim, however, while appearing as PW1, he states that they have given kick blows on his leg and this is improvised version to connect the petitioner with injury No.4 as per MLR.

Learned Senior Counsel has referred to the MLR of victim Yashin Khan to submit that there is no corresponding injury in the MLR

and, as the version of the petitioners was not supported by the medical version, therefore, the police during investigation found the petitioners to be innocent.

Learned Senior Counsel has refer to the MLR of Yashin Khan, wherein the following injuries were found :-

"Injuries:

1. An incised wound present on left side centre of forehead starts forehead to frontal aspect with size 6x4 cm bone depth. Adv. CT scan head and surgeon opinion.
2. An incised present on left index finger with size of 2.5x0.5 cm. Adv. X-ray left hand and Ortho opinion.
3. Superficial lacerated would present on left hand with size 7x0.2 cm depth.
4. Linear superficial abrasion present on right leg just below knee with size of 7x0.2 cm.
5. C/o pain in left shoulder with scapular with abrasion."

Learned Senior Counsel has submitted that only a superficial abrasion is found on the right leg, which is not referred to in the FIR. Learned Senior Counsel has also submitted that all the other injuries are attributed to the two accused Ranbir @ Titu and Naib Singh.

It is also argued that during the investigation the police has recorded the statements of respectables of the village, who have sworn in affidavit that the petitioners have not caused any injury and they

were not present at the spot and that is why they were found innocent during investigation.

It is next argued by the learned Senior Counsel for the petitioners that no fresh evidence has come on record or in the knowledge of the Court, as basis of which the Court could form an opinion under Section 319 Cr.P.C. to summon the petitioners as an additional accused.

In reply, the learned State counsel, assisted by counsel for the complainant, have submitted that it has come in the disclosure of accused Ranbir @ Titu that a few days ago there was a dispute with Dharam Vir-petitioner and Yashin Khan-victim and due to that reason, all the accused have caused injuries to him. Similar is the disclosure statement of accused Naib Singh.

On a Court query, whether there is any reference to this enmity of Dharam Vir with Yashin Khan reflected in the FIR or in the statement recorded on oath in examination-in-chief as PW1, the learned State counsel as well as the counsel for the complainant could not dispute that there is no such reference of any previous enmity with petitioner Dharam Vir.

After hearing learned counsel for the parties and on perusal of the FIR, statement of PW1 in examination-in-chief, disclosure of two accused Naib Singh and Ranbir @ Titu, this Court finds merit in this case for following reasons :-

(a) The trial Court while passing the impugned order has given weightage to the two disclosure statements of the two accused that the complicity of the petitioner is there. Though at the stage of applying the test under Section 319 Cr.P.C., the disclosure of the co-accused was not to be taken in consideration, not being any fresh evidence, however, even if the statement of two disclosures are taken into consideration, the same are in sharp contrast to the allegations in the FIR.

(b) In FIR, as well as statement of PW1, it is nowhere stated that petitioner-Dharam Vir was having any previous enmity with Yashin Khan, whereas for the first time in the disclosure statement of the co-accused it has come that on account of the previous enmity due to a dispute between Dharam Vir and Yashin Khan, all the accused have caused injuries to him.

(c) Even otherwise, as per the allegations in the FIR it is stated that Dharam Vir and Pawan Kumar @ Pawan has given fist blows to victim Yashin Khan on mouth, however, while appearing as PW1, it is stated that Dharam Vir and Pawan Kumar @ Pawan accomplice of Ranbir @ Titu gave kick blows on his leg. This is improvised version to connect the petitioner with injury No.4, which is only a superficial abrasion as there is no corresponding injury in MLR qua allegations of fist blows as per FIR.

(d) The variation or improvement made by the complainant from the version in the FIR while appearing as PW1 is nothing but an

overt act to connect the petitioners with injury No.4, which is superficial abrasion on the leg.

(e) Even otherwise, interestingly, as per the disclosure of the two co-accused, it was petitioner Dharam Vir, who was having previous enmity with Yashin Khan but while appearing as PW1 Yashin Khan stated that petitioners Dharam Vir and Pawan Kumar @ Pawan were accomplices of accused Ranbir @ Titu and Naib Singh. Therefore, in terms of the judgment of the Hon'ble Supreme Court passed in **Hardeep Singh's and Brijindra Singh's** cases (*supra*), the trial Court has not applied its judicial mind as no fresh evidence, more than *prima facie* case to be seen at the time of the framing of the charge has come on record to hold that the extent that the evidence if goes un rebutted would lead to the conviction, in view of the contradictory stand of the prosecution itself.

Accordingly, the above mentioned two revision petitions, i.e. CRR-400-2022 and CRR-795-2022, are allowed and the impugned order dated 17.12.2021 passed by the Additional Sessions Judge, Panchkula is set aside.

December 15, 2022
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**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO