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

**CRM-49364-2022 in/and
CRM-M-14907-2016
Date of decision : 19.12.2022**

Kulwinder Kaur and others

....Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. S.P. Soi, Advocate and
Mr. Sahil Soi, Advocate
for the petitioners.

Mr. Jaiteshwar S. Bhandari, Asstt. Advocate General, Punjab
for respondent No.1-State.

Mr. Ramesh Sharma, Advocate
for respondent No.2.

PANKAJ JAIN, J. (ORAL)

CRM-49364-2022

This is an application for placing on record copy of the Challan
marked as Annexure P-3.

For the reasons recorded in the application, the same is
allowed. Document marked as Annexure P-3 is taken on record subject to
all just exceptions.

CRM-M-14907-2016

Present petition has been filed under Section 482 Cr.P.C.
impugning the order dated 9th of November, 2015 passed by SDJM,

Nakodar whereby the petitioners have been ordered to be summoned by resorting to provisions contained in Section 319 Cr.P.C.

2. In the present case, FIR was registered at the behest of Santokh Nath, who alleged that :-

“...On dated 29-5-2013 ASI Gurmeet Singh alongwith HC Harnek Singh 641 and HC Harnek Singh 641, C. Surjit Singh 1280 reached civil hospital Nakodar where doctor told that the injured is now fit to make statement and ASI Gurmit Singh had recorded the statement of injured. Santokh Nath stated that I went to sleep with my family after having dinner, then outside our house Bakhshish @ Shishu son of Amarjeet abusing us loudly outside our house, at that time it would be around 11:30 at night, so I opened the gate and told Bakhshish @ Shishu that you should not abuse and go back to your house but he did not stop and within minutes Bakhshish @ Shishu alongwith iron rod his father Amarjit son of Hazara carrying brick, Happy, Lala son of Amarjit and Kulwinder Kaur wife of Amarjit, Surjit wife of Bhola, Sabi d/o Bhola, Bhola son of Hazara, babbu son of Hazara resident of Rasulpur Kalan raising Lalkaras and came towards our house. I got scared and entered my house. All the aforesaid persons entered our house and Bakhshish @ Shishu inflicted blow of iron rod on face upon lips and Amarjit hit brick below my nose on the left side. I fell down unconscious. My wife kanica came forward to rescue me then Kulwinder Kaur wife of Amarjit, Surjit wife of Bhola, Sabi daughter of Bhola dragged my wife Kanica to the house of Bakhshish Lal and lock the house from inside and they locked by wife inside their house and we all family members shouted loudly. A lot of people gathered there and Soni son of Piara, Kartar son of Mehenga Ram, Sabi son of Dara rescued my wife Kanica from Bakhshish Lal's house. The aforesaid accused threatened to kill us. My father Gurmej Singh and my mother Shindo saw this whole incident. Later my brother

Tarlok Nath arranged a vehicle and got admitted me in the Civil Hospital Nakodar where I am under treatment, the aforesaid accused has broken our doors by smashing bricks. Statement has been got recorded, action should be taken.”

3. During the investigation, the present petitioners were placed in Column No.2 and were not challaned. Only Amarjit and Bakhshish @ Shishu who were alleged to have inflicted injuries upon the person of complainant Santokh Nath were challaned. During the course of trial Santokh Nath appeared as PW-1 and reiterated the allegations levelled in the FIR. The present application under Section 319 Cr.P.C. was moved by the prosecution which stands allowed vide impugned order by the Trial Court holding as under :-

“4. The perusal of record shows that present FIR in question was registered against the two accused present in the court namely Bakhshish, Amarjit alongwith Happy, Lalla, Kulwinder Kaur, Surjit, Sabhi, Bholla and Babbu (who are now sought to be summoned vide this application) on the basis of statement of complainant Santokh Nath wherein he had categorically narrated the role of said Happy, Lalla, Kulwinder Kaur, Surjit, Sabhi, Bholla and Babbu alongwith other accused in the alleged incident. But the challan in question was presented in the court only against accused Amarjit and Bakhshish Lal who are facing the trial at this stage and said Happy, Lalla, Kulwinder Kaur, Surjit, Sabhi, Bholla and Babbu were kept in Column No.2 in said challan on the basis of some enquiry by DSP Nakodar. Now during the course of prosecution evidence, complainant Santokh Nath stepped into the witness box as PW1 and reiterated his version regarding incident in question and also categorically named Happy, Lalla, Kulwinder Kaur, Surjit, Sabhi, Bholla and

Babbu as accused and has attributed a specific role to them that they alongwith other accused persons forcibly entered in his house and they dragged him in the house of Bakhshish Lal. In view of the aforesaid material on record, I am of the view that sufficient ground is made out for proceeding against said persons under Section 319 Cr.P.C. and there is earlier probability that they may be eventually convicted in the present case, if prosecution evidence is satisfactorily led against them. Accordingly, present application is hereby admitted and said Happy, Lalla, Kulwinder Kaur, Surjit, Sabhi, Bholla and Babbu are ordered to be summoned as accused in this case to face trial for commission of offences falling under Section 452, 323, 325, 342, 427, 506, 34 of Indian Penal Code for 19.02.2016.

4. Ld. Counsel representing the petitioners submits that the Ld. Trial Court has completely misdirected itself and the test as prescribed by the dicta of law laid down in **Hardeep Singh vs. State of Punjab, 2014(1) R.C.R. (Criminal) 623** has been completely bye-passed. He submits that apart from mere repetition of allegations against the petitioners there is no cogent evidence on record on the basis of which satisfaction as required by the Apex Court in **Hardeep Singh's** case (supra) can be recorded to the effect that there is 'more than a *prima facie* case' against the petitioners. In support of his contention, he relies upon the judgments passed by this Court in the case of **Laxmi vs. State of Haryana and another, 2018(1) R.C.R. (Criminal) 987** and in **Surjit Singh and another vs. State of Punjab and another – CRM-M-22347 of 2016**.

5. Per contra, Counsels for the respondents submit that all the

petitioners have been specifically named in the FIR and all of them constituted unlawful assembly thereby making them guilty of offence punishable under Sections 148, 149 IPC the least.

6. Ld. Counsel for the complainant submits that the prosecution agency exonerated the petitioners by stating that all the persons constituting unlawful assembly cannot be held guilty and while doing so, the prosecution agency has travelled beyond its jurisdiction.

7. I have heard counsel for the parties and have gone through the records of the case.

8. A bare perusal of the contents of the FIR would reveal that there are specific allegations against Kulwinder Kaur, Sabhi and Surjit i.e. petitioners No.1, 5 and 7. Admittedly, Kanica, who is one of the victims has been associated with the investigation and she has reiterated the allegations levelled in the FIR. It is trite law that testimony of an injured witness is on a higher pedestal as his presence on the scene of occurrence cannot be doubted. Reference can be made to law laid down by Apex Court in **Sartaj Singh vs. State of Haryana and another, 2021(5) SCC 337**. Apex Court while considering the similar plea w.r.t. repetition of the allegations levelled in the FIR held as under :-

“6.2 Considering the law laid down by this Court in Hardeep Singh (supra) and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under section 319 CrPC, 1973 even on the basis of the statement made in the examination-in-chief of the

witness concerned and the Court need not wait till the crossexamination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by crossexamination; and (ii) 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 CrPC, 1973 provided from the evidence (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial.

6.3 In *S. Mohammed Ispahani v. Yogendra Chandak* (2017) 16 SCC 226, this Court has observed and held as under: (SCC p. 243)

"35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge-sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet. Once that stage has gone, the Court is still not powerless by virtue of section 319 CrPC, 1973. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused.

6.4 In the case of **Rajesh v. State of Haryana (2019) 6 SCC 368**, after considering the observations made by this Court in *Hardeep Singh* (supra) referred to hereinabove, this Court has further observed and held that even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the chargesheet has

gone, in that case also, the Court is still not powerless by virtue of section 319 CrPC, 1973 and even those persons named in FIR but not implicated in chargesheet can be summoned to face the trial provided during the trial some evidence surfaces against the proposed accused.

7. Applying the law laid down by this Court in the aforesaid decisions to the case of the accused on hand, we are of the opinion that learned Trial Court was justified in summoning the private respondents herein to face the trial as accused on the basis of the deposition of the appellant - injured eye witness. As held by this Court in the aforesaid decisions, the accused can be summoned on the basis of even examination-in-chief of the witness and the Court need not wait till his cross-examination. If on the basis of the examination-in-chief of the witness the Court is satisfied that there is a prima facie case against the proposed accused, the Court may in exercise of powers under section 319 CrPC, 1973 array such a person as accused and summon him to face the trial. At this stage, it is required to be noted that right from the beginning the appellant herein - injured eye witness, who was the first informant, disclosed the names of private respondents herein and specifically named them in the FIR. But on the basis of some enquiry by the DSP they were not chargesheeted. What will be the evidentiary value of the enquiry report submitted by the DSP is another question. It is not that the investigating officer did not find the case against the private respondents herein and therefore they were not chargesheeted. In any case, in the examination-in-chief of the appellant-injured eye witness, the names of the private respondents herein are disclosed. It might be that whatever is stated in the examination-in-chief is the same which was stated in the FIR. The same is bound to be there and ultimately the appellant herein - injured eye witness is the first informant and he is bound to again state what was stated in the FIR, otherwise he would be accused of contradictions in the FIR and the statement before the Court.

Therefore, as such, the learned Trial Court was justified in directing to issue summons against the private respondents herein to face the trial.

8. Now, so far as the impugned judgment and order passed by the High Court is concerned, it appears that while quashing and setting aside the order passed by the learned Trial Court, the High Court has considered/observed as under:

"No evidence except the statement of Sartaj Singh, which has already been investigated into by the concerned DSPs was relied upon by the trial Court to summon, which was not sufficient for exercising power under Section 319 Cr.P.C., 1973.

As per statement of Sartaj Singh, Palwinder Singh and Satkar Singh gave him lathi blows on the head. Manjeet Singh, Amarjeet Singh, Rajwant Singh, Narvair Singh and Sukhdev Singh were holding gandasi. Manjeet Singh, Amarjeet Singha and Rajwant Singh gave him gandasi blows on the head and face. All the injuries are stated to fall in the offence under Sections 323, 324, 326, 341 read with Section 149 IPC. In case, so many people as mentioned above were giving gandasi and lathies blows on the head, Sartaj Singh was bound to have suffered more injuries, which would not have left him alive and probably he would have been killed on the spot. He seems to have escaped with only such injuries as have invited offence only under Sections 323, 324, 326, 341 read with Section 149 of IPC. Therefore, the trial Court erred in exercising his jurisdiction summoning the other accused where exaggeration and implication is evident on both sides."

8.1 The aforesaid reasons assigned by the High Court are unsustainable in law and on facts. At this stage, the High Court was not required to appreciate the deposition of the injured eye witness and what was required to be considered at this stage was whether there is any prima facie case and not whether on the basis of such material the proposed accused is likely to be convicted or not and/or whatever is stated by the injured eye

witness in his examination-in-chief is exaggeration or not. The aforesaid aspects are required to be considered during the trial and while appreciating the entire evidence on record. Therefore, the High Court has materially erred in quashing and setting aside the order passed by the learned Trial Court summoning the accused to face the trial in exercise of powers under section 319 CrPC, 1973 on the reasoning mentioned hereinabove. Even the observations made by the High Court referred to hereinabove are on probability. Therefore, the impugned judgment and order passed by the High Court is not sustainable in law and on facts and is beyond the scope and ambit of section 319 CrPC, 1973.”

(emphasis supplied)

9. In view of the law laid down by Apex Court in **Sartaj Singh's case** (supra) it can be safely said that law laid down by Single Bench in the case of **Laxmi vs. State of Haryana and another** (supra) is *per incuriam* and is not binding.

10. Consequently, in the considered opinion of this Court so far as Kulwinder Kaur, Sabhi and Surjeet are concerned, no fault can be found with the orders passed by the Trial Court. Precise contention raised by counsel for the petitioners stands answered in reference to question No.5 by the Constitutional Bench in **Hardeep Singh's case** (supra) holding as under :-

“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.”

11. However, w.r.t. other petitioners there is nothing apart from the bald allegation that they were also part of the assembly. Thus, Trial Court erred in summoning the other petitioners namely Lally, Happy, Bhola and Babbu. Consequently, the petition *qua* them is ordered to be allowed.

12. Ordered accordingly.

December 19, 2022
Dpr

(PANKAJ JAIN)
JUDGE

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