

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

Sr. No.240

CRM-M-35697-2014

Date of decision : 11.10.2022

Darshana

.....Petitioner(s)

VERSUS

Partap and others

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Ms.Monika Singh, Advocate for the petitioner

Mr.Manoj Chahal, Advocate for respondent Nos. 1 to 8

Ms.Aditi Girdhar, AAG, Haryana
for respondent No.9

AMAN CHAUDHARY, J.

The challenge in the present petition is to the order dated 2.9.2014, Annexure P-7, whereby the revision petition filed by the accused-respondent Nos. 1 to 8 was accepted and the order dated 28.10.2013, Annexure P-5, passed by learned trial Court, allowing the application of the complainant-petitioner filed under Section 319 Cr.P.C., was set aside.

Briefly put, on the basis of statement of injured- Darshana-complainant, stating therein that on 28.9.2011, when she alongwith other four members of her family had gone to her fields on tractor to cultivate the land, at about 3 PM, Lilu s/o Chandan, Jai Pal, Krishan, Bir Singh, Partap ss/o Kanihya, Poonam, Rajesh s/o Lilu, Naseeb, Pappu, Lala, Narender, Vikram, Jasvir, Inder, Ran Singh, Ramesh, whose parentage is not known, all resident of village Kharak Kalan alongwith Darshana w/o Krishan,

Chandro w/o Bir Singh, wives of Poonam, Rajesh, Naseeb and Lillu, all of a sudden came there in a tractor trolley carrying lathi, dandas and jellies. Immediately on reaching, Bir Singh a lathi blow on her waist and second lathi blow was given by Naseeb on her posterior thereafter, Poonam and Pappu gave lathi blow on her posterior. When her daughter and brother tried to intervene then Lillu, Bir Singh, Poonam, Jai Pal, Krishan, Partap, Lala started beating her brother as well and Sukhbir Singh, Inder Singh, Darshana, Chandro and remaining ladies assaulted her daughter with lathies and dandas. FIR No.433 dated 29.9.2011 was registered under Sections 148, 149, 323 IPC at Police Station Sadar Bhiwani, against the accused persons. After conducting investigation, final report under Section 173 Cr.P.C. was filed by the police in the Court, wherein private respondents were found to be innocent and put in column No.2. During the pendency of the proceedings before the trial Court, an application under Section 319 Cr.P.C. was filed by the complainant-petitioner to summon the respondent Nos. 1 to 8, namely; Partap, Poonam, Vikram, Narender, Sukhbir, Ramesh, Darshana, Chanderi, Sushila, Sunita and Krishna, as additional accused. The said application came to be allowed on the ground that complainant, Darshana had in her deposition as PW1, named the aforesaid persons except Vikram, Narender and Sukhbir, as such, they were summoned to face the trial.

The aforesaid order came to be challenged at the hands of accused-respondent Nos. 1 to 8 herein before the revisional Court, on the ground that there was no prima facie evidence or ground was made out to summon them and even the police after thorough investigation had found

nothing against them and declared them innocent, in view of which, they were put in column No.2 and not challaned by the police. Learned Appellate Court allowed the revision vide judgment dated 2.9.2014, Annexure P-7, considering the provisions of Section 319 Cr.P.C. holding that the impugned therein that mere prima facie case against the accused does not fulfill the requirement of exercise of extraordinary powers conferred on the Court, which is required to be used very sparingly under Section 319 Cr.P.C. Just because the accused have been named in the FIR, in the statement under Section 161 Cr.P.C. was not sufficient to invoke the power under Section 319 Cr.P.C., for which material has to be brought before the Court of such a nature that would satisfy the Court that it would reasonably lead to conviction of the person, sought to be summoned. However, the trial Court in the present case, had not recorded any such satisfaction, thus, exercise of power under Section 319 Cr.P.C. was not justified.

Learned counsel for the petitioner submits that the investigating agency had failed to explain as to how and on what basis, the persons summoned under Section 319 Cr.P.C. by the trial Court were found to be innocent despite they being named in the FIR. It is further submitted that the revisional Court without pointing out any error or lacuna in the order of summoning could not have set aside the well reasoned order passed by the trial Court.

Contrarily, learned counsel for respondent Nos. 1 to 8 submits that the order of the trial Court has rightly been set aside by the revisional Court as the same was not justified inasmuch as the private respondents had

been summoned only on account of the statement of PW1-Darshana-complainant, without there being any material brought on record which would satisfy that it would reasonably lead to their conviction.

Heard the learned counsel for the parties.

The moot question which falls for consideration before this Court in the proceedings is as to whether the orders passed by the courts below along with the application under Sections 319 Cr.P.C. are within the parameters as set out in the said provisions and the settled law.

It would thus be apposite to refer to Section 319 of the Cr.P.C., which reads thus:-

"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."

It would be also fruitful to recapitulate the settled law with

Magistrate under Section 319 Cr.P.C. which is no more *res integra* as the Constitutional Bench of Hon'ble The Supreme Court of India in the case of **Hardeep Singh Vs. State of Punjab**, reported in 2014 (3) SCC 92 had observed and held thus :-

"8. The Constitutional mandate under Articles 20 and 21 of the Constitution of India, 1950 (hereinafter referred to as the "Constitution") provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to the society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under the Cr.P.C. indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished.

9. The presumption of innocence is the general law of the land as every man is presumed to be innocent unless proven to be guilty. Alternatively, certain statutory presumptions in relation to certain class of offences have been raised against the accused whereby the presumption of guilt prevails till the accused discharges his burden upon an onus being cast upon him under the law to prove himself to be innocent. These competing theories have been kept in mind by the legislature. The entire effort, therefore, is not to allow the real perpetrator of an offence to get away unpunished. This is also a part of fair trial and in our opinion, in order to achieve this very end that the legislature thought of incorporating provisions of Section 319 Cr.P.C. It is with the said object in mind that a constructive and purposive interpretation should be adopted that advances the cause of justice and does not dilute the intention of the statute conferring powers on the court to carry out the above mentioned avowed

object and purpose to try the person to the satisfaction of the court as an accomplice in the commission of the offence that is subject matter of trial.

10. In order to answer the aforesaid questions posed, it will be appropriate to refer to Section 351 of the Criminal Procedure Code, 1898 (hereinafter referred to as 'Old Code'), where an analogous provision existed, empowering the court to summon any person other than the accused if he is found to be connected with the commission of the offence. However, when the new Cr.P.C. was being drafted, regard was had to 41st Report of the Law Commission where in the paragraphs 24.80 and 24.81 recommendations were made to make this provision more comprehensive. The said recommendations read:

"24.80 It happens sometimes, though not very often, that a Magistrate hearing a case against certain accused finds from the evidence that some person, other than the accused before him, is also concerned in that very offence or in a connected offence. It is proper that Magistrate should have the power to call and join him in proceedings. Section 351 provides for such a situation, but only if that person happens to be attending the Court. He can then be detained and proceeded against. There is no express provision in Section 351 for summoning such a person if he is not present in court. Such a provision would make Section 351 fairly comprehensive, and we think it proper to expressly provide for that situation.

24.81 Section 351 assumes that the Magistrate proceeding under it has the power of taking cognizance of the new case. It does not, however, say in what manner cognizance is taken by the Magistrate. The modes of taking cognizance are mentioned in Section 190, and are apparently exhaustive. The question is, whether against the newly added accused, cognizance will be supposed to have been taken on the Magistrates own information under Section 190(1), or only in the manner in which cognizance was first taken of the offence against the accused. The question is important, because the methods of inquiry and trial in the two cases differ. About the true position under the existing law, there has been difference of opinion, and we think it should be made clear. It seems to us that the main purpose of this particular provision is that the whole case against all known suspects should be proceeded with expeditiously and convenience requires that cognizance against the newly added accused should be taken in the

same manner against the other accused. We, therefore, propose to recast Section 351 making it comprehensive and providing that there will be no difference in the mode of taking cognizance if a new person is added as an accused during the proceedings. It is, of course, necessary (as is already provided) that in such a situation the evidence must be reheard in the presence of the newly added accused."

The Additional Sessions Judge, Bhiwani, while allowing the revision petition filed by respondent Nos.1 to 8, vide order dated 2.9.2014 has observed as under:-

"16. Perusal of the impugned order does not fulfill the requirement of exercise of extraordinary powers conferred on the Court, which has required to be used very sparingly under Section 319 Cr.P.C. Mere existence of prima-facie case against the accused does not fulfill the requirement of higher standard set up for the purpose of invoking the jurisdiction under Section 319 Cr.P.C. by the trial Court. Merely because the accused have been named in the FIR, in the statement under Section 161 Cr.P.C. and thereafter before the trial Court by the prosecution witness and some involvement in the commission of offence is shown, would not give jurisdiction to the Court to invoke its powers under section 319 Cr.P.C. What is further requirement is that the material, which is brought before the Court, must be of such a nature as would satisfy the Court that it would reasonably lead to conviction of the person sought to be summoned. No satisfaction in this regard has been recorded by the trial Court, which would justify the exercise of powers under Section 319 Cr.P.C. invoked by the Court. The order, therefore, passed by the trial Court cannot be sustained and deserves to be set aside."

It has been specifically mentioned in the order of Additional Sessions Judge, Bhiwani, that the complainant herself has made a contradictory statement before the police as well as the Court while appearing as PW1. Moreover, no sufficient evidence had been brought on

conviction of the said respondents.

In view of the above, this Court finds no illegality or perversity calling for any intervention in the impugned order, as a sequel thereto, the present petition being bereft of merit is dismissed.

11.10.2022
gsv

(AMAN CHAUDHARY)
JUDGE

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