

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3436-2018 (O & M)
Date of decision: 12.12.2022

Satbir

... Petitioner

V/s

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rajesh Lamba, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Kunal Dawar, Advocate,
for respondents No.2 to 4.

JASJIT SINGH BEDI, J. (Oral)

The present revision petition has been filed against the order dated 26.09.2018 passed by the Additional Sessions Judge, Faridabad vide which the application under Section 319 Cr.P.C. to summon the respondents No.2 to 4 has been dismissed.

2. The brief facts of the case are that the petitioner got registered an FIR No.547 dated 10.11.2017 under Sections 323, 325, 307, 506, 201 and 34 IPC at Police Station Sadar Ballabhgarh, Faridabad, against seven persons, namely, Rohit, Mohit, Amit alias Chintu, Ved Parkash, Satpal, Manoj and Anup.

3. During the course of investigation, 03 accused i.e. Satpal son of Balbir, Manoj son of Ved Pal and Anup son of Dinesh came to be

exonerated. The report under Section 173 Cr.P.C. was presented against 04 accused persons, namely, Rohit son of Satpal, Mohit son of Satpal, Amit @ Chintu son of Satpal and Ved Pal son of Balbir. During the course of Trial, an application under Section 319 Cr.P.C. was moved to summon the respondents No.2 to 4 as additional accused and the same was dismissed. Meanwhile, the trial was proceeding against the challaned accused. The petitioner-complainant filed the present revision petition challenging the order dated 26.09.2018 passed by the Additional Sessions Judge, Faridabad vide which the application under Section 319 Cr.P.C. to summon the respondents No.2 to 4 was dismissed.

4. Notice of motion was issued on 11.10.2018 and the matter was adjourned from time to time.

5. Meanwhile, the charge-sheeted 04 accused came to be convicted vide judgment and order of sentence dated 14.12.2021 and 17.12.2021.

6. The learned counsel for the petitioner contends that the evidence on record was sufficient to summon the respondents No.2 to 4 who had been wrongly exonerated. The prosecution case stands firmly established in view of the conviction of the co-accused. He, thus, contends that the respondents No.2 to 4 be summoned to face the Trial in FIR No. 547 dated 10.11.2017 under Sections 323, 325, 307, 506, 201 and 34 IPC at Police Station Sadar Ballabhgarh, Faridabad

7. The learned counsel for the State, on the other hand, places reliance on the judgment of the Hon'ble Supreme Court in 'Sukhpal Singh Khaira versus State of Punjab (passed in Crl. Appeal No.885 of 2019, SLP

main trial, a final adjudication has taken place, an accused, who was sought to be summoned cannot in fact, be summoned under Section 319 Cr.P.C.

8. I have heard the learned counsel for the parties.

9. In 'Sukhpal Singh Khaira's case (supra)' the Hon'ble Supreme Court has held as under:-

"19. Thus, to put the matter in perspective, a perusal of the recommendation of the Law Commission would indicate the intention that an accused who is not charge sheeted but if is found to be involved should not go scot-free. Hence, section 319 of CrPC, 1973 was incorporated which provides for the Court to exercise the power to ensure the same before the conclusion of trial so as to try such accused by summoning and being proceeded along with the other accused. In Shashikant Singh (supra), a Bench of two Hon'ble Judges, on holding that the joint trial is not a must has held the requirement as contained in section 319(1) of CrPC, 1973 as only directory, and as such the judgment of conviction dated 16.07.2001 against the charge-sheeted accused was considered not to be an impediment for the court to proceed against the accused who was added by the summoning order dated 07.04.2001, which in any case was prior to the conclusion of the trial which in our view satisfies the requirement since the summoning order was before the judgment. In the case of Hardeep Singh (supra) also the power of the Court under section 319 of CrPC, 1973 has been upheld, reiterated, and it has been held that such power is available to be exercised at any time before the pronouncement of judgment. Therefore, there is no conflict or diverse view in the said decisions insofar as the exercise of power, the manner and the stage at which power is to be exercised. However, a certain amount of ironing the crease is required to explain the connotation of the phrase "could be tried together with the accused" appearing in sub-

section (1) read with the requirement in sub-section 4(a) to section 319 of CrPC, 1973 and to understand the true purport of exercising the power as per the phrase "before the pronouncement of judgment".

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27. Therefore, from a perusal of the provisions and decisions of this Court, it is clear that the conclusion of the trial in a criminal prosecution if it ends in conviction, a judgment is considered to be complete in all respects only when the sentence is imposed on the convict, if the convict is not given the benefit of section 360 of CrPC, 1973. Similarly, in a case where there are more than one accused and if one or more among them are acquitted and the others are convicted, the trial would stand concluded as against the accused who are acquitted and the trial will have to be concluded against the convicted accused with the imposition of sentence. When considered in the context of section 319 of CrPC, 1973 there would be no dichotomy as argued, since what becomes relevant here is only the decision to summon a new accused based on the evidence available on record which would not prejudice the existing accused since in any event they are convicted.

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32. We have also kept in view the point by point analysis of the object and power to be exercised under section 319 of CrPC, 1973 as has been indicated in para 34 of Manjit Singh v. State of Haryana and Others (2021) SCC Online SC 632.

33. For all the reasons stated above, we answer the questions referred as hereunder:-

"I. Whether the trial court has the power under section 319 of CrPC, 1973 for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

The power under section 319 of CrPC, 1973 is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

II. Whether the trial court has the power under section 319 of the CrPC, 1973 for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.

III. What are the guidelines that the competent court must follow while exercising power under section 319 CrPC, 1973?"

(i) If the competent court finds evidence or if application under section 319 of CrPC, 1973 is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

(ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

(iii) If the decision of the court is to exercise the power under section 319 of CrPC, 1973 and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

(iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

(v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

(vi) If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.

(vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

(viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under section 319 of CrPC, 1973 can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.

(ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke

and exercise the power under section 319 of CrPC, 1973 the appropriate course for the court is to set it down for re-hearing.

(x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

(xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

(xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier;

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.

34. Having answered the questions referred, in the above manner, we direct the Registry to obtain orders from Hon'ble the Chief Justice and place before the appropriate Bench to take a decision on the factual aspects arising in the case in the background of the legal position and contentions on merits.

35. Before parting, we place on record our appreciation for the assistance rendered by all the learned Senior Counsel/Counsel including Shri S. Nagamuthu, learned Senior Counsel who assisted the Court as an Amicus Curiae”.

10. In view of the judgment in ‘Sukhpal Singh Khaira (supra)’, since 04 of the accused were convicted vide judgment dated 14.12.2021, the present revision petition for summoning of the respondents No.2 to 4 under

Section 319 Cr.P.C. has been rendered infructuous and the same is disposed of as such.

December12, 2022
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No