

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

CRR-1569-2022

Date of Decision: 13.12.2022

RAJBIR @ RAJA

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Deepak Vashishth, Advocate
for the petitioner.

HARSH BUNGER, J.

The petitioner has filed the present revision petition against order dated 25.05.2022 passed by learned Sessions Judge, Jind, whereby, the application moved by him under Section 319 of the Code of Criminal Procedure, for summoning (i) Rishi son of Ram Singh : (ii) Ashok son of Mahipal, both residents of Village Barsola; (iii) Parmesh son of Jai Singh, resident of Village Jhanjh Kalan; (iv) Manoj son of Dalbir, resident of Village Shamlo; (v) Ravinder son of Om Parkash, resident of Village Ponkari Kheri and (vi) Vinod @ Bulli son of Satyawan, resident of Village Ponkari Kheri (respondent Nos.2 to 7 in the present petition), as additional accused to face trial along with other co-accused was dismissed.

Succinctly, the present petitioner/complainant got registered an FIR No.95 dated 02.03.2021 under Section 302 read with Section 34 of the Indian Penal Code, 1860 and Sections 25, 30 of the Arms Act, 1959, at Police Station Sadar Jind, against the accused persons namely, Rishi (respondent No.2), Ashok (respondent No.3), Parmesh (respondent No.4),

Manoj (respondent No.5), Ravinder (respondent No.6), Vinod @ Bulli (respondent No.7). Relevant extract of the FIR reads as under :-

“ Yesterday on 01.03.2021 around 9/9:15 pm, my brother Sukbir along with Rishi S/o Ram Singh, Ashok S/o Mahipal caste Jat, R/o Barsola, District Jind, Parmesh S/o Jai Singh R/o Jhanjh Kalan (Jind), Manoj S/o Dalbir R/o Samdo, Raka @ Rakesh S/o Inder, Ravinder S/o Parkash, Pardeep S/o Leela, Vinod @ Bulli S/o Satyawar, caste Jat R/o Pokhri Kheri, Jind were sitting in the house of Raka to settle the account of liquor shop, while doing the accounts suddenly Pardeep S/o Leela became curious and took the license pistol of Rakesh @ Raka and fired on Sukhbir with intent to kill him. Then bullet hit Sukhbir on his eyes and he fell down and in his blood bath. His abovementioned fellowmen took him to Civil Hospital, Jind and then in ambulance took him Sapra Hospital, Hisar, where treatment of my brother is going on. It is requested that strict legal action should be taken against Pardeep S/o Leela, who fired on Sukhbir with intent to kill him and against any other person who is involved in it. I wrote my statement to you, listen and read it which is true. Sd/- Rajbir @ Raja. Attested Satish Kumar ASI, I/C P.P. T-Point Hansi Road, Jind. Dated 02.03.2021.”

Subsequent to the registration of FIR, investigation was carried out and report under Section 173 of the Code of Criminal Procedure was filed, wherein, the present respondents No.2 to 7 were kept in column No.2. Thereafter, during trial, the petitioner-complainant (Rajbir @ Raja son of Kaliram) was examined as PW1 and his examination-in-chief reads as under:-

“ We are having five brothers. Eldest one is Jagdish, after that Krishan, then myself, then Sukhbir (since deceased) and youngest one is Dalbir. Sukhbir was married

and was living separately and he was having a share in liquor vend in our village. On dated 01.03.2021 at about 09/09.15 P.M., Sukhbir was present in his house. Two persons namely Ravinder and other person whose name I do not remember had come to the house of Sukhbir and took him with them in the baithak of Rakesh alias Raka. I also followed them to the house of Rakesh alias Raka. I saw Parmesh son of Jai Singh, Ravinder, Rakesh alias Raka, Pardeep, Vinod alias Buli, Ashok, Rishi and Manoj were present in the house of Rakesh. I was also sitting outside the room. I heard some conversation in loud voice of all of them. Then suddenly Pardeep took a pistol from Rakesh and fired a gun shot upon Sukhbir with intention to kill him which hit near the eye of Sukhbir. Then all the persons disbursed from there and we took Sukhbir to Civil Hospital, Jind from where he was referred to Hisar and we took him at Sapra Hospital, Hisar. Police came at Sapra Hospital, Hisar and got recorded my statement Ex. P1 which bears my signature at point-A. As a common intention among all the above named persons, Pardeep fired a gun shot due to altercation among them regarding the share and settlement of accounts of the liquor vend. All the above mentioned persons were partner in the liquor vend.”

Thereafter, the public prosecutor filed an application under Section 319 of the Code of Criminal Procedure for summoning (i) Rishi S/o Ram Singh R/o Barsola (ii) Ashok S/o Mahipal R/o Barsola (iii) Parmesh S/o Jai Singh R/o Village Jhanj Kalan (iv) Manoj S/o Dalbir R/o Shamlo (v) Ravinder S/o Om Parkash R/o Ponkhari Kheri (vi) Vinod @ Bulli S/o Satyawar R/o PonkhariKheri, as additional accused.

The learned Sessions Judge, Jind, vide impugned order dated 25.05.2022, dismissed the application of the petitioner moved under Section

319 of the Code of Criminal Procedure, by holding as under :-

“It is evident from his initial statement given before the police, which is duly signed by him that there are some contradictions. In his initial version given to the police, he had stated that all the said persons were present in the sitting room of Rakesh alias Rakka, when the incident had taken place, where as in his statement before Court, he has stated that two persons of whom, one was Rakesh alias Rakka and another person, whom the complainant does not know took Sukhbir to the house of Rakesh alias Rakka, where all the persons were present. As regards the incident that accused Pardeep in a state of anger, suddenly took the pistol of Rakesh alias Rakka and fired gun shot at Sukhbir. Even when the complainant has been examined as PW1, it cannot be said that any specific role has been attributed to any of other person other than accused Rakesh alias Rakka and Pardeep, accused facing trial in this case.

*The counsel for the complainant has placed reliance upon the view taken in case law titled as **Sunita Versus State of Haryana and another CRR 663-2021 (P&H), decided on 01.09.2021**. In this case, it was discussed that the statement made at the time of lodging of FIR under Section 154 Cr.P.C. as well as statement recorded under Section 161 Cr.P.C. are both not substantive pieces of evidence. Yet, an FIR would stand at a higher pedestal in comparison to the statement made under Section 161 Cr.P.C. for the reason that the statement on the basis of which the FIR comes into existence is signed by its maker and can be used both for contradicting as well as corroborating its maker, whereas the statement under Section 161 Cr.P.C. can be used only for the limited purpose of contradicting the witness, who has made it. Certainly the view taken in the cited case that where there is no material improvement in the first*

statement recorded under Section 154 Cr.P.C. and the statement made by complainant while stepping in the witness box that in the said case, it was found that there was sufficient material and evidence before the trial Court to allow application under Section 319 Cr.P.C. In the case in hand, however, admittedly with regard to the role attributed to the persons who were six in number sought to be summoned have not been given any specific role either at the time of recording statement under Section 154 Cr.P.C. or even when the complainant has stepped in the witness box as PW1. There is only a slight difference in the first statement recorded under Section 154 Cr.P.C., that all the persons including the accused persons were present in the sitting room of the accused Rakesh @ Rakka whereas in the statement given before the Court, he stated that two persons of whom one was accused Rakesh @ Rakka had taken Sukhbir (deceased) to his 'baithak' where other persons were sitting. It is not the contention of the complainant in both his statements that there was any instigation on the part of other six persons who were present there rather the version of the complainant is that accused Pardeep suddenly in a state of anger took out a pistol of accused Rakesh @ Raka and fired at Sukhbir.

*In case law **Sagar vs. State of U.P. and another Criminal Appeal No.(S) 397 of 2022 (Arising out of SLP (Crl.) Nos.7373 of 2021, the case of Hardeep Singh vs. State of Punjab, 2014(1) R.C.R. (Criminal) 623**, has also been relied upon, the view taken is that there is a caution attached to the power under Section 319 Cr.P.C., which is discretionary and extraordinary power and should be used sparingly only in those cases where the circumstances of the case so warrant. The crucial test is that when there 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 rebutted, would lead to*

conviction. Similarly in Smt. Sushil Soni vs. State of Haryana and others 2016(3) RCR (Criminal) 793 (P&H), the view taken was that a small suspicion or doubt is not sufficient to summon such person as an additional accused and the Court has to exercise its powers sparingly as summoning of a person as an additional accused is a serious matter. Merely on the statement of complainant, ipso facto, cannot form the basis of summoning of a person under Section 319 Cr.P.C.

In view of above discussed proposition of law, considering the facts and circumstances of the case in hand, when most specific role or act on the part of such six persons who are sought to be summoned as accused has not been explicitly attributed, this Court while exercising the necessary caution and the discretionary and extraordinary power under Section 319 Cr.P.C. which should be used sparingly, does not find it a fit case to summon aforementioned six persons as additional accused to be tried with Rakesh @ Rakka and Pardeep, accused already facing trial. Accordingly, the present application stands dismissed.”

Accordingly, the present revision petition has been filed.

Learned counsel for the petitioner has submitted that the learned Sessions Judge, Jind has erred in law and facts in dismissing the application under Section 319 of the Code of Criminal Procedure, despite the fact that the petitioner while appearing as witness before the trial Court had specifically named respondents No.2 to 7 and had also attributed specific role to them, however, still the application under Section 319 of the Code of Criminal Procedure, has been dismissed. It is submitted that there are specific allegations against respondents No.2 to 7 herein as they all are involved in the murder of Sukhbir (brother of the petitioner) and hence, the

said persons are liable to be summoned as additional accused and tried along with other accused Rakesh @ Raka and Pardeep.

I have heard learned counsel for the petitioner and have perused the paper book as well as impugned order dated 25.05.2022 passed by the Court of Sessions Judge, Jind.

Before considering the merits of the contentions made by learned counsel for the petitioner, it is necessary to refer to Section 319 Cr.P.C. which reads as under:-

"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 a fresh, 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."

From a bare reading of Section 319 Cr.P.C. it is clear that the power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during trial to summon any person as an accused to face the trial if it appears from the evidence that such person has committed any offence for which such person could be tried together with other accused.

The provisions of Section 319 Cr.P.C. have been enacted in the Code of Criminal Procedure with a view to achieve objective that the real culprit should not get away unpunished and the court is empowered to proceed against any person not shown as an accused if it appears from the evidence that such person has committed any offence then he may be summoned to face the trial along with other co-accused.

The Full Bench of Hon'ble Apex Court in ***Hardeep Singh Vs. State of Punjab and others 2014 (1) JIC 539 (SC)*** has laid down the principles in respect of summoning the persons who were not charge-sheeted during investigation but from the evidence they were found guilty for committing such an offence. The relevant paragraphs 96, 97, 107, 108 are quoted hereunder: -

"96. 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.P.C., though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two- Judges Bench of this Court in Vikas v. State of Rajasthan, 2013 (11) SCALE 23, 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.

97. In Rajendra Singh (Supra), the Court observed:

"Be it noted, the court need not be satisfied that he has committed an offence. It need only appear to it that he has committed an offence. In other words, from the evidence it need only appear to it that someone else has committed an offence, to exercise jurisdiction under Section 319 of the Code. Even then, it has a discretion not to proceed, since the expression used is "may" and not "shall". The legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction under this section. The expression "appears" indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under Section 319 of the Code or not."

107. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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.

108. 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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. 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.P.C. to form any opinion as to the guilt of the accused..."

While dealing with the power of trial Court under Section 319 Cr.P.C., Hon'ble the Apex Court in the *Babubhai Bhimabhai Bokhiria and another Vs. State of Gujarat and others*, 2014(5) SCC 568, made following observation in paragraph 8 thereof:-

"8. Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher."

The same view was taken by Hon'ble Apex Court in a subsequent decision in *Shiv Prakash Mishra Vs. State of Uttar Pradesh and another* 2019(7) SCC 806. The relevant paragraph 10 is quoted below:-

"10. The standard of proof employed for summoning a person as an accused person under Section 319 Cr.P.C. is higher than the standard of proof employed for framing a charge against the accused person. The power under Section 319 Cr.P.C. should be exercised sparingly. As held in Kailash v. State of Rajasthan: (SCC p. 55, para 9)

"9. the power of summoning an additional accused under Section 319 Cr.P.C. should be exercised sparingly. The key words in Section are "it appears from the evidence".... "any person".... "has committed any offence". It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, the discretion under Section 319 Cr.P.C. would be used by the court."

In *Labhuji Amratji Thakor and others v. State of Gujarat and another* 2019(12) SCC 644, the Hon'ble Supreme Court observed thus:

13. The High Court does not even record any satisfaction that the evidence on record as revealed by the statement of victim and her mother even makes out a prima facie case of offence against the appellants. The mere fact that the Court has power under section 319CrPC, 1973 to proceed against any person who is not named in the FIR or in the charge-sheet does not mean that whenever in a statement recorded before the Court, name of any person is taken, the Court has to mechanically issue process under section 319CrPC, 1973. The Court has to

consider substance of the evidence, which has come before it and as laid down by the Constitution Bench in Hardeep Singh has to apply the test i.e. "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."

It has thus been consistently held by the Hon'ble Apex Court that the power to summon an accused is an extra-ordinary power conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against other persons against whom action has not been taken. The powers conferred on the trial Court under Section 319 Cr.P.C. are discretionary and it should not be applied mechanically.

Apart from the above, it is also well settled that whether an additional accused ought to be summoned under Section 319 Cr.P.C. or not is a primary discretion of the trial Court. The higher Courts are not well advised to meddle with the same ordinarily even if they think that a different view might also have been possibly taken. Hon'ble the Apex Court in ***Ashish Chadha Vs. Asha Kumari and another 2012(1) SCC 680*** has laid down the law that it is the trial Court which has to decide whether evidence on record is sufficient to make out a prima-facie case against the accused. The relevant paragraph 21 reads as under: -

"21. In this connection, we may usefully refer to the observations of this court in Munna Devi vs. State of Rajasthan & another (SCC p.632, para 3).

"3. We find substance in the submission made on behalf of the appellant. The revision power under the Code of Criminal Procedure cannot be exercised in a routine

and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged."

The coordinate Bench of this Court in ***CRR No.3558 of 2017***

titled as ***Ramphal vs State of Haryana and others*** decided on ***29.10.2018***,

has held as under :-

"10. It is a settled proposition of law that power under Section 319 Cr.P.C. is an extraordinary power, which is to be used sparingly and with great caution only if compelling reasons are there. On the basis of vague and general allegations or casual statement of the witness, a person cannot be summoned to face trial. The Court can order summoning of additional accused if evidence on record is strong, cogent and make out a prima facie case indicating the involvement of the person sought to be summoned as additional accused in the crime. In this case, the police after due investigation has found the allegations levelled against respondents no.2 to 5 as not correct. The petitioner has reiterated same statement before the trial Court while appearing as PW-5, as such, no other evidence was produced regarding the involvement of respondents no.2 to 5 in the crime. Statement of petitioner also indicates a motive over implication of respondents no.2 to 5 due to previous enmity between the parties."

When the case in hand is considered in the light of the abovesaid legal position then it is manifest from a perusal of the

examination-in-chief of petitioner-complainant (Rajbir @ Raja S/o Kaliram) that barring few improvements, the statement is more or less similar to the complaint submitted by the petitioner to the police on the basis of which the FIR was registered.

A perusal of the deposition of Rajbir @ Raja would show that no specific role has been attributed to any of the respondents No.2 to 7. In the initial complaint submitted to the police, the petitioner had submitted that respondents No.2 to 7 along with main accused were present in the sitting room (baithak) of Rakesh @ Raka, when the incident had taken place, whereas, in the examination-in-chief before the Court, the petitioner had stated that two persons, out of whom, one was Rakesh @ Raka and another un-known person had taken Sukhbir to the house of Rakesh @ Raka, where all the persons were present. In respect of the incident, it is stated that accused Pardeep in a state of anger, suddenly took the pistol of Rakesh @ Raka and fired gunshot at Sukhbir.

A perusal of the FIR as well as statement before the Court would show that no specific role has been attributed to any of respondents No.2 to 7 other than accused Rakesh @ Raka and Pardeep, who are already facing trial in this case.

Considering the totality of circumstances, this Court does not find any illegality or perversity in the conclusion recorded by learned Sessions Judge, Jind, in its order dated 25.05.2022, whereby application under Section 319 of the Code of Criminal Procedure, was dismissed.

Accordingly, the present revision petition is bereft of any merit

and the same is accordingly dismissed.

All pending miscellaneous application/s, if any, shall also stands disposed of.

December 13, 2022
gurpreet

(HARSH BUNGER)
JUDGE

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