

**(249) IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CRM-M-31293-2020**

**Date of decision : 16.11.2022**

**ARUN DASS**

**... Petitioner**

**Versus**

**STATE OF PUNJAB & OTHERS**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Pushpinder Kaushal, Advocate  
for the petitioner.

Mr. Jaiteshwar Singh, Asst. A.G., Punjab.

Mr. Randeep Singh, Advocate  
for respondent Nos.2 and 3.

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**JASJIT SINGH BEDI, J. (ORAL)**

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the impugned order dated 19.06.2020 (Annexure P-7) passed by the Additional Sessions Judge, Patiala whereby the revision petition filed by respondent Nos.2 and 3 against the order dated 05.09.2019 (Annexure P-9) passed by the Judicial Magistrate, 1<sup>st</sup> Class, Rajpura has been allowed thereby setting aside the summoning order under Section 319 Cr.P.C.

2. The brief facts of the case are that an FIR No.62 dated 14.08.2015 under Sections 324, 323, 506, 148, 149 IPC was registered upon the statement of the complainant/petitioner against Baljinder Ram

@ Soni son of Sita Ram, Som Parkash son of Sadhu Ram, Sita Ram son

of Sadhu Ram, Ram Dass alias Naam Dass son of Sadhu Ram (respondent No.3), Manjit Kaur wife of Baljinder Ram, Prem Lata wife of Sita Ram, Krishna Devi wife of Som Parkash and Darshan Kumar son of Ram Dass @ Naam Dass (respondent No.2). Different roles were attributed to the various accused persons. So far as respondent No.3-Ram Dass alias Naam Dass is concerned, he is stated to have inflicted a *danda* blow on the back and legs of the complainant. Darshan Kumar (respondent No.2) has not been attributed any specific injury.

Based on the investigation conducted, respondent No.2-Darshan Kumar son of Ram Dass alias Naam Dass and Naam Dass @ Ram Dass (respondent No.3) son of Sadhu Ram were found to be innocent as they were found not to be present at the spot. Therefore, the report under Section 173 Cr.P.C. was presented against six accused namely, Baljinder Ram son of Sita Ram, Som Parkash, Sita Ram, Manjit Kaur, Prem Lata, Krishna Devi. The copy of the FIR and the report under Section 173 Cr.P.C. are annexed as Annexures P-1 and P-2 to the petition.

3. Pursuant thereto, the statement of the complainant/petitioner, Arun Dass was recorded as PW-1 and an application under Section 319 Cr.P.C. was moved for summoning of Ram Dass @ Naam Dass son of Sadhu Ram and Darshan Kumar son of Ram Dass @ Naam Dass as an additional accused. The said application was duly forwarded through the A.P.P. The Trial Court vide judgment dated 05.09.2019 (Annexure P-7) allowed the application and summoned respondent Nos.2 and 3 to face Trial as additional accused along with the

challaned accused. The copy of the order dated 05.09.2019 is annexed as Annexure P-7 to the petition.

4. Aggrieved against the said order, respondent Nos.2 and 3 filed a revision petition before the Additional Sessions Judge, Patiala who vide impugned order dated 19.06.2020 (Annexure P-9), allowed the said revision petition and set aside the order dated 05.09.2019 (Annexure P-7).

5. The present petition has been preferred against the order dated 19.06.2020 (Annexure P-9), whereby the summoning order under Section 319 Cr.P.C. dated 05.09.2019 (Annexure P-7) has been set aside.

6. The learned counsel for the petitioner contends that the Revisional Court has grossly erred in setting aside the well-reasoned order passed by the Trial Court. Respondent Nos.2 and 3 were specifically named in the FIR as also in the deposition of the complainant. Respondent No.3-Naam Dass @ Ram Dass has been attributed a specific injury of having caused a *danda* blow on the back and legs of the complainant. The mere recording of DDR entry No.10 showing respondent No.2-Darshan Kumar to be present at Police Station Shambhu is not sufficient to rebut the statement of the complainant recorded in Court. The said DDR entry raising the plea of alibi, could, at best, be a matter of the defence of the accused during the course of Trial. Even otherwise, DDR entry concerns only respondent No.2-Darshan Kumar and so far as accused respondent No.3-Naam Dass @ Ram Dass is concerned, no reason whatsoever has been provided in the report under Section 173 Cr.P.C. as to why he has been exonerated. In fact, a perusal of the MLR would reveal that the injuries attributed to

respondent No.3-Naam Dass @ Ram Dass i.e. a *danda* blow on the back and legs of the complainant are clearly discernible in the MLR (Annexure P-10). He thus contends that the well-reasoned order of the Magistrate has been set aside by the Sessions Court without any cogent reason whatsoever and therefore, the said order is liable to be quashed and respondent Nos.2 and 3 were liable to face Trial as additional accused.

7. The learned State counsel while referring to the reply dated 22.12.2020 submits that it was a case of version and cross-version and a cross-version under Section 354A, 323 IPC was registered against the petitioner on the statement of Manjit Kaur wife of Baljinder Ram one of the accused who has been challaned. A report under Section 173 Cr.P.C. was presented against both the parties under the respective sections.

Respondent No.2-Darshan Kumar was present at Police Station Shambhu and the entries in the DDR establishing his alibi were made by him. Respondents No.2 and 3 had been exonerated on the basis of detailed enquires conducted and therefore, there was no illegality committed by the Sessions Judge, Patiala while passing the order under challenge and the present petition was liable to be dismissed.

8. The learned counsel for respondent Nos.2 and 3 while referring to his reply dated 23.03.2021 which is already on record contends that the petitioner has improved his version qua the roles/injuries attributed to the respondents while deposing in Court. Respondent No.2-Darshan Kumar was working as a Head Constable in the Punjab Police at that time and on the date of the alleged occurrence was posted as an Assistant Munshi at Police Station Shambhu, District

Patiala. During the course of investigation, the S.H.O. Police Station Shambhu stated by way of a certificate that on 10.08.2015 Constable Darshan Kumar was present at Police Station Shambhu and a DDR was started to be written by him at 07.10 AM bearing DDR No.9 and in the morning at 08.00 AM counting of employees was done by him (the S.H.O.) and a Dairy Report of the same was also entered by Constable Darshan Kumar. The copy of the certificate of the S.H.O. dated 11.08.2015 and a copy of the DDR No.9 are annexed as Annexures R-1 and R-3, respectively to the petition.

He contends that the allegations against the answering respondents were thoroughly investigated by the Deputy Superintendent of Police (Investigation), Patiala by associating both the parties and it was only then that an Inquiry Report dated 21.09.2015 (Annexure R-2) came to exonerate the answering respondents. The said Inquiry Report was subsequently endorsed by the Superintendent of Police, Patiala.

He contends that a perusal of the certificate dated 11.08.2015, investigation report dated 21.09.2015 and the DDR No.9 dated 10.08.2015 (Annexures R1 to R-3) respectively clearly proved that answering respondent No.2-Darshan Kumar was not present at the spot. In fact, he was present on duty as Assistant Munshi at Police Station Shambhu at 07.10 AM on 10.08.2015, whereas the alleged occurrence took place at 07.15 AM at village Harpalpur which is situated at a distance of about 20 KMs from the Police Station Shambhu. In fact, the answering respondents had been falsely implicated on account of pending civil and criminal litigations between the parties.

With respect to the allegations against respondent No.3-Naam Dass @ Ram Dass, the learned counsel submits that a perusal of the MLR of the complainant would reveal no injury on the back and only pain in the leg. He thus contends that the injuries attributed to respondent No.3-Naam Dass @ Ram Dass did not correspond with the MLR and therefore, the medical evidence runs contrary to the ocular account.

Thus, supporting the impugned judgment, the counsel submits that no case for summoning of respondent Nos.2 and 3 is made out.

9. I have heard the learned counsel for the parties at length and examined the record.

10. Before proceeding further in the matter, it would be apposite to refer to the provisions of 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.”*

11. The Hon’ble Supreme Court in **Michael Machado & another Versus Central Bureau of Investigation & another, 2000(2) R.C.R. (Criminal) 75**, held as under:-

*“11.The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.*

*12. But even then, what is conferred on the court is only a discretion as could be discerned from the words “the court may proceed against such person”. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the Court should turn against another person whenever it comes across evidence connecting that another person also with the*

offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the Court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons.”

[Emphasis supplied]

12. The Hon’ble Supreme Court in **Manjeet Singh Versus State of Haryana & others, 2021(4) R.C.R. (Criminal) 25**, held as under:-

*“13. The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under Section 319 CrPC can be summarized as under:*

*(i) That while exercising the powers under Section 319 CrPC, 1973 and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;*

*(ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;*

*(iii) the law has been properly codified and modified by the legislature under the CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;*

*(iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;*

*(v) where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial;*

*(vi) Section 319 CrPC, 1973 allows the court to proceed against any person who is not an accused in a case before it;*

*(vii) the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency;*

*(viii) Section 319 CrPC, 1973 is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;*

*(ix) the power under Section 319(1) CrPC, 1973 can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pretrial stage intended to put the process into motion;*

*(x) the court can exercise the power under Section 319 CrPC, 1973 only after the trial proceeds and commences with the recording of the evidence;*

*(xi) the word “evidence” in Section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;*

*(xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319 CrPC, 1973 is to be exercised and not on the basis of material collected during the investigation;*

*(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC, 1973 and can proceed against such other person(s);*

*(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under Section 319 CrPC, 1973 can be exercised;*  
*(xv) that power under Section 319 CrPC, 1973 can be exercised even at the stage of completion of examination-in-chief and the court need not wait till the said evidence is tested on cross-examination;*  
*(xvi) 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 charge-sheet 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 the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);*  
*(xvii) while exercising the powers under Section 319, 1973 CrPC the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.*

[Emphasis supplied]

13. A perusal of Section 319 Cr.P.C. as also the judgment in Michael Machado case's (supra) and Manjeet Singh's case (supra) would clearly show that the Court has wide powers to summon a person as an accused who has been exonerated by the Investigating Agency, if it finds that there is sufficient evidence available against the said accused in order to try him along with the accused already facing trial. However, there is no compelling duty to summon an accused. The discretionary power so conferred only be exercised to achieve criminal justice and

must be based on the quality of evidence collected. In fact, the Court being the sole repository of justice, there is a duty cast upon it to uphold the law and ensure that the real accused should not get away by manipulating the Investigating Agency/Prosecuting Agency. What the Court needs to examine while adjudicating upon an application under Section 319 Cr.P.C. is that there should be evidence available on the file in the shape of oral evidence or documentary evidence in order to invoke its powers to summon an additional accused under Section 319 Cr.P.C.

14. Coming back to the facts of the present case, it may be pertinent to mention here that as many as 08 persons were named in the FIR, 06 of whom were challaned and respondent Nos.2 and 3 were exonerated during the course of investigation. So far as, accused respondent No.2-Darshan Kumar is concerned, he is stated to have been present at Police Station Shambhu as is borne out from the DDR entry Nos.9 and 10. As per the FIR, respondent No.2-Darshan Kumar is stated to have been present at the spot but no specific injury has been attributed to him. However, while deposing as PW-1, the complainant-Arun Dass has stated that respondent No.2-Darshan Kumar was armed with bricks and gave him blows with the same. Thus, it is apparent that the complainant has significantly improved his version qua the role of respondent No.2-Darshan Kumar and therefore even without adverting to the DDR entries in question, the false implication of respondent No.2-Darshan Kumar cannot be ruled out. It can thus be stated that the prospects of conviction of respondent No.2 are bleak.

15. So far as accused respondent No.3-Naam Dass @ Ram Dass is concerned, in the FIR he is stated to have given *danda* blows on the

back and legs of the complainant. While deposing as PW-1, the complainant has stated that respondent No.3 and Som Parkash (accused facing Trial) had given him *danda* blows on his back. A perusal of the MLR of the injured complainant-Arun Dass would reveal only redness and inflammation on the left upper arm, redness and inflammation on the right hand including finger, pain on the right leg (without any external injury) and an inflammation and redness on the thumb of the left hand. None of these injuries correspond to the injuries attributed to the petitioner i.e. that of having given a *danda* blow on the back and legs of the complainant injured. Therefore, the medical evidence is contrary to the ocular account. Thus, it can be held that the prospects of the conviction of respondent No.3 are also unlikely.

16. In view of the aforementioned discussion, it can be safely held that the evidence against respondent Nos.2 and 3 is insufficient. As many as 06 persons are already facing Trial for the occurrence and the false implication of the private respondents cannot be ruled out, moreso, when respondent No.2 is a Government official. Thus, it can also be said that there are no reasonable prospects for the conviction of the private respondents.

17. In view of the above, I find no merit in the present petition. Therefore, the same is hereby dismissed.

**(JASJIT SINGH BEDI)**  
**JUDGE**

**16.11.2022**  
JITESH

**Whether speaking/reasoned:- Yes/No**

**Whether reportable:- Yes/No**