

## IN THE HIGH COURT OF PUNJAB &amp; HARYANA, CHANDIGARH

CRR-1754-2022(O&amp;M)

Date of decision :August 25, 2022

Sameer @ Sameer Dahiya

..... Petitioner

Versus

State of Haryana and others

..... Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Ashok Singla, Advocate  
for the petitioner.Mr. Sumit Jain, Additional Advocate  
General, Haryana.

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Pankaj Jain, J (oral).

The present Criminal revision petition is filed at the behest of the petitioner who has been summoned by the trial court exercising power under Section 319 Cr.P.C. As per the contents of the FIR the complainant who is infact the injured person stated that:-

*“Today on 24.4.2020, I was sitting inside the house of my Chacha named Suresh. And my brother Samundra was standing outside in the street and then Anil s/o Naresh and Sameer s/o Tejram from my village came there and since there was already some dispute regarding something going on between us, Anil gave my brother a knife blow and after immediately coming inside, Sameer caught hold of me (koli bhar li) and Anil gave me a knife blow and then we raised the alarm of “marr diya, maar diya” and upon hearing the alarm, family members staarted coming and seeing the family members come, they ran away by giving life threats.”*

The report under Section 173 Cr.P.C was filed by the Investigating authority wherein the petitioner was not challaned. The injured person appeared as PW-4 and stated as under :-

*“That on 24.04.2020 at about 3.30 /3.45 p.m.I was standing in the street in front of the house of my uncle Suresh. My brother Sandeep and my uncle Suresh was inside the house of Suresh. Sameer son of Tej Ram and Anil son of Naresh, who belong to our village came there. Anil gave me a knife blow on right side of my chest and Sameer caught hold my brother Sandeep after entering the house of my uncle Suresh by taking him in grip of arms (kohli) and Anil gave knife blow to my brother Sandeep. My family members shifted us to Civil Hospital, Sonipat. Accused fled away from the spot. Doctor of Government Hospital, Sonipat referred me to BPS, Khanpur, Sonipat. Thereafter, on 25.04.2020, I got admittted in Tulip Hospital, Sonipat where I was operated upon and remained admitted there upto 30<sup>th</sup> April, 2020. Thereafter, I was discharged from the hospital. Accused also extended threat to kill us on the day of the occurrence.”*

Based upon the deposition of the injured person the application under Section 319 Cr.P.C to summon the present petitioner was filed which stands allowed vide impugned order in the revision petition. At the time of summoning the petitioner learned trial court observed:-

*“As noted above the principle at the stage of considering application under Section 319 Cr.P.C in order to summon a person as an additional accused is to see whether from evidence led before the Court possibility of conviction can be recorded. In the present case the assertions made by PW-4 in his evidence duly shows presence and specific role played by Sameer in the occurrence. His evidence at this stage finds corroboration from contents of FIR which was lodged promptly within few hours on the same day and MLR of PW-4. No material is available at this stage to dislodge the case of the prosecution completely to conclude that Sameer was not present at the place of occurrence and had not played any role in causing injuries to Sandeep and Saumunder at the time of*

*occurrence. If the evidence of PW-4 is read with FIR Ex.P-1, which discloses presence of Sameer then at this stage when case of prosecution is unrebutted a strong possibility of recording conviction against Anil and Sameer is clearly made out. The evidence of PW-4 therefore at this stage is sufficient to conclude the case of conviction against Sameer.”*

Learned counsel for the petitioner while assailing the order passed by the trial court heavily relied upon the judgment passed by the Constitution Bench of Apex Court in **Hardeep Singh Vs. State of Punjab (SC) Constitution Bench Law Finder Doc id 514451 in Criminal Appeal No. 1751 of 2008** to contend that the power under Section 319 Cr.P.C. is discretionary and extraordinary power and the same has to be exercised sparingly and then established by the prosecution before exercising jurisdiction under Section 319 Cr.P.C. Further reliance has been placed upon the judgment in **Brijendra Singh and others Vs. State of Rajasthan (SC) Law Finder Doc Id 851765 in Criminal Appeal No.763 of 2017** decided on 27.4.2017 to contend that the trial court prior to summoning the petitioner under Section 319 Cr.P.C. was duty bound to look into the evidence collected by the investigating officer while forming the prima facie opinion and to see as to whether much stronger evidence than mere possibility of his complicity has come out or not.

He further relied upon the judgment in **Parvinder Singh and others Vs. State of Punjab and another in Criminal Misc.No. M-14072 of 2015** decided on 24.9.2019 and **Rahul Vs. State of Haryana and another in CRR No. 4885 of 2017 (O&M)** decided on 24.2.2022 to contend that mere repetition of the contents of the FIR by the complainant in his statement recorded in court would not be enough to summon the

person under Section 319 Cr.P.C.

I have heard learned counsel for the petitioner and have gone through the record of the case.

**In Hardeep Singh's case (supra) Apex Court held that:-**

*“105. Power under section 319 CrPC, 1973 is a discretionary and an extraordinary 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.*

*106. 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 un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under section 319 CrPC, 1973. In section 319 CrPC, 1973 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 CrPC, 1973 to form any opinion as to the guilt of the accused.”*

Thus, the question that will arise in the present case is whether the trial court has formed a prima facie opinion with respect to the material on record in terms of the test laid down in **Hardeep Singh's case (supra)**.

PW-4 who is an injured witness appeared before the court and fully supported the case of the prosecution. Trite it is that the testimony of an injured witness is on higher pedestal. The petitioner was named in the FIR by the complainant. The police during investigation believed the plea of alibi raised by the petitioner and filed chargesheet without implicating him. Once an injured witness fully corroborates the case of the prosecution the Court was within its power to summon the accused exercising power under Section 319 Cr.P.C. While dealing with the similar situation in the case of **Sartaj Singh Vs. State of Haryana and another 2021 (5) SCC 337** the Apex Court held that:-

*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 cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; 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 charge-sheeted. 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."*

There is nothing on record shown by the counsel for the petitioner which contradicts the case of the prosecution. The documents showing tower location of mobile phone of the petitioner cannot dislodge the case of the prosecution. It may advance the plea of alibi raised by the

petitioner which is subject matter of trial.

As a sequel of the discussion held hereinabove, no case is made out for exercising of the revisional jurisdiction.

Consequently, the present Criminal Revision Petition is dismissed being without merit.

(PANKAJ JAIN)  
JUDGE

August 25, 2022

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Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No