

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

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CRM-M-45787-2022 (O&M)

Date of Decision: 15.12.2022

MALKIT AND ANR

... Petitioners

Versus

STATE OF HARYANA AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Vikas Rohal, Advocate
for the petitioners.

HARNARESH SINGH GILL, J.(Oral)

Challenge is to the order dated 08.09.2022 passed by the learned Sessions Judge, Jind, vide which the application under Section 319 Cr.P.C. moved by the prosecution, at the instance of complainant/respondent No.2, was allowed and the petitioners were ordered to be summoned as additional accused in FIR No.222 dated 04.09.2019, under Sections 323, 324, 341, 326, 307, 506 and 34 IPC, registered at Police Station Sadar Narwana, District Jind, Haryana.

Learned counsel for the petitioners submits that though the petitioners have specifically been named in the FIR, yet the fact remains that there is no specific role or injury attributed to them; that investigation was conducted and the petitioners found innocent and were rightly kept in column No.2 and thus, the impugned order is not based on the facts of the case and the same is liable to be set aside.

I have heard the learned counsel for the petitioners.

I do not find any infirmity in the impugned order passed by the learned Sessions Judge, Jind.

As noticed above, the petitioners have specifically been named in the FIR and a specific role has been attributed to them, though they were declared innocent by the Investigating Agency. The complainant, in his testimony before the trial Court as PW-6, has reiterated the version, as contained in the FIR. There is no conclusive evidence on record, which could go to show the innocence of the petitioners, at this initial stage. The prosecution in its wisdom cannot adopt the policy of pick and choose to proceed against the selected accused persons only.

In Hardeep Singh vs. State of Punjab and others, 2014 (1) RCR (Criminal) 623, while dealing with power of Court to summon a person as additional accused, a five-Judge Bench of the Hon'ble Apex Court has held as under:

“110. We accordingly sum up our conclusions as follows:

Question Nos. I & III

Q.1 *What is the stage at which power under Section 319 Cr.P.C. can be exercised?*

AND

Q.III *Whether the word "evidence" used in Section 319 (1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?*

A. *In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be*

taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. As evidence brought during a trial.

Question No. II

Q.II *Whether the word "evidence" used in Section 319 (1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?*

A. *Considering the fact that under Section 319 Cr.P.C. A person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.*

Question No. IV

Q.IV *What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?*

A. *Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.*

Question No.V

Q.V *Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?*

A. *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 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh. The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove.”*

In view of the law laid down by the Hon'ble Apex Court in Hardeep Singh's case (supra), no ground is made out to interfere with the well reasoned order dated 08.09.2022 passed by the Court below.

Dismissed.

15.12.2022

Aman Jain

(HARNARESH SINGH GILL)
JUDGE

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