

CRM-M-2177 of 2023

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

CRM-M-2177 of 2023
Date of decision: 16.01.2023

Suman and another

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Ajay Vijrania, Advocate, for the petitioner.
Ms. Gaganpreet Kaur, AAG, Haryana.

NAMIT KUMAR, J. (ORAL)

This petition has been filed by the petitioners under Section 482 Cr.P.C. impugning the order dated 21.09.2021 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Charkhi Dadri, whereby petitioners, namely, Suman and Sunil have been summoned as additional accused under Section 319 Cr.P.C. for facing trial along with Sita Ram, Ajit and Kuldeep in case FIR No.103 dated 27.05.2016 under Sections 323, 325, 506 and 34 IPC, registered at Police Station Badhra, and order dated 12.12.2022 (Annexure P-4) passed by learned Additional Sessions Judge, Charkhi Dadri, whereby impugned order of the learned JMJC Charkhi Dadri, has been affirmed and upheld by dismissing the revision petition filed by the petitioners and other three accused.

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Brief facts of the case are that present case was got lodged by complainant Bahadur Singh with the allegations that he hails from village Shyam Kalan. He has constructed his house in his fields. On 26.05.2016, at about 01:00 p.m., some hot words exchanged between him and one Ramroop son of Jage Ram, resident of village Shyam-Kalan as he illegally wanted to get electricity connection from electric pole installed near his (complainant) house in the fields. Complainant requested him to contact electricity department for this work, but Ramroop remained adamant. After some time, Ramroop, Sita Ram, Parvesh, Ramottar sons of Jage Ram, Chaman Parkash son of Parvesh, Ajit son of Banwari, Kuldeep son of Rajbir, petitioner No.1-Suman, all residents of village Shyam Kalan, and Sunil resident of Bhutanpura (Rajasthan) came in three vehicles, make Bolero and MAX, and inflicted injuries to him with their respective weapons and also gave fist & kick blows. He raised noise, on which his daughter-in-law Suman wife of Radha Krishan came there. Assailants also caused injuries to Suman. After some time, son & wife of complainant also came there and rescued them from the clutches of accused persons. Assailants also threatened to kill them in future and openly stated that they will install electric wire as per their own wish & desire. Injured were then shifted to General Hospital, Bhiwani for treatment. On basis of afore-said complaint, formal FIR was lodged. Investigation was set into motion. Spot was inspected. Rough site-plan of the place of occurrence was prepared. Statements of witnesses under Section 161 CrPC were recorded at the relevant time & places. Medical record was also taken

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into police possession. Finding sufficient incriminating evidence, accused Ram Avtar, Chaman Parkash, Ram Roop & Parvesh were arrested. After completion of other necessary formalities of investigation, final report under Section 173 CrPC against said four accused was prepared and presented before the learned Illaqa Magistrate. During investigation remaining accused named in the FIR were found innocent, therefore, they were put in column No.2 of the challan.

During pendency of the trial, complainant moved application under Section 319 Cr.P.C. seeking summoning of Sita Ram son of Jag Ram, Ajit son of Banwari, Kuldeep son of Rajbir, petitioner No.1-Suman, all residents of village Shyam Kalan and petitioner No.2-Sunil, resident of village Bhutanpura Panni Singhpura (Rajasthan), as additional accused on the ground that above named persons also inflicted injuries upon the complainant and his daughter-in-law Suman. Complainant had duly mentioned names of these persons in the statement given to the police. Names of these persons were also mentioned by son & daughter-in-law of complainant in their statements given to police under Section 161 Cr.P.C. The names of above persons have also come into the statement of complainant as well as eye-witnesses recorded in the Court. Upon notice, accused filed their reply. After hearing learned counsel for the parties and going through the averments, learned trial court vide impugned order dated 21.09.2021 allowed the application and summoned the revisionist to face trial under Sections 323, 325, 506 read-with Section 34 of IPC.

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Aggrieved against the order of the trial Court dated 21.09.2021, petitioners and other three accused, namely, Sita Ram, Ajit and Kuldeep preferred revision petition, which has been dismissed by learned Additional Sessions Judge, Charkhi Dadri, vide impugned order dated 12.12.2022. Hence this petition.

Learned counsel for the petitioners contends that the petitioners have wrongly been summoned as additional accused by the trial Court by considering the matter in a very casual manner whereas any person can only be summoned as an additional accused if there is overwhelming evidence against him. To support his contention, he has placed reliance upon a Constitution Bench judgment in ***Hardeep Singh v. State of Punjab and others, 2014(1) RCR (Criminal) 623.***

Per contra, learned State counsel contends that the impugned order summoning the petitioner is perfectly valid as the same has been passed keeping in view the involvement of the petitioners in the case.

I have heard learned counsel for the parties and perused the record.

Perusal of the record shows that the proposed additional accused were named by the complainant and eye-witnesses during their statements recorded under Section 161 Cr.P.C. and thereafter PW-5 complainant-Bahadur Singh in his statement recorded before the trial Court specifically named the petitioners and three other proposed accused. Similarly, PW-1 Suman and PW-2 Radha Krishan – eye-witness to the occurrence have also deposed before the trial Court that

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the proposed accused persons, namely, Sita Ram, Ajit, Kuldeep, Suman (petitioner No.1) and Sunil (petitioner No.2) also inflicted injuries upon the person of the complainant and PW-1 Suman on the day of occurrence. Further, the allegations levelled against the proposed accused have also been duly corroborated by the medical evidence. Therefore, since there is sufficient material on record which shows involvement of the proposed accused in the crime, they have rightly been summoned to face trial.

Section 319 Cr.P.C. 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 afresh, 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

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offence upon which the inquiry or trial was commenced.”

A perusal of Section 319 Cr.P.C. reveals that where in the course of any inquiry 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. The language of Section 319 Cr.P.C. is very clear that any person not being the accused, if has committed any offence, can be tried with the accused.

The Hon'ble Supreme Court in the landmark judgment, in the case of ***Hardeep Singh (supra)***, has framed one of the following issues :-

“5(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?”

and the same was answered in para 71 of the judgment which reads as under :-

“71. It is, therefore, clear that the word “evidence” in Section 319 Cr.P.C. means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the Court to decide whether power under Section 319 Cr.P.C. is to be exercised and not on the basis of material collected during investigation.”

The Hon'ble Supreme Court also held in the said judgment

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“98. 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.

99. 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.”

The test as laid down by the Hon'ble Constitutional Bench for invoking power under Section 319 Cr.P.C. inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence, the power under Section 319 Cr.P.C. should

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be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by the Supreme Court, is one which is more than prima facie case which is applied at the level of relevant proceedings.

Therefore, it is clear that there was sufficient cogent and convincing evidence before the trial Court in the shape of depositions of PW-5 complainant Bahadur Singh; PW-1 Suman and PW-2 Radha Krishan eye-witnesses to the occurrence, who have specifically named the petitioners and other three proposed accused.

I am of the considered view that the trial Court has rightly exercised its power under Section 319 Cr.P.C. on the basis of deposition of PW-5 complainant Bahadur Singh; PW-1 Suman and PW-2 Radha Krishan eye-witnesses to the occurrence, which would suffice in law to invoke the power under Section 319 Cr.P.C.

In view of the facts narrated above and settled proposition of law, no illegality or perversity is found in the orders passed by the trial Court and revisional Court. Therefore, the present petition lacks merit and is accordingly dismissed with no order as to costs.

(NAMIT KUMAR)
JUDGE

16.01.2023
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No