

CRM-22234-2023 IN/AND
CRR-247-2019 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-22234-2023 IN/AND
CRR-247-2019 (O&M)
Date of decision: July 27, 2023

Charanjit Singh
.....Petitioner
versus
State of Punjab and another
.....Respondents

CORAM: HON’BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Jasraj Singh, Advocate for petitioner.
Ms. Guramrit Kaur, DAG Punjab.
None for respondent No.2.

ARUN MONGA, J. (ORAL)

CRM-22234-2023

For the reasons stated in application, same is allowed. Copy of final report (challan) dated 17.01.2017 and judgment dated 21.04.2023 as Annexures P-4 and P-5 respectively are taken on record, subject to all just exceptions.

Main case (O&M)

Challenge herein is to an order dated 14.11.2018 passed by learned Additional Sessions Judge, Hoshiarpur, whereby an application filed by respondent No.2/ complainant under Section 319 of Code of Criminal Procedure, 1973 (for short ‘Cr.P.C.’)for summoning the petitioner to face the trial as additional accused, was allowed.

2. Per prosecution version, respondent No.2/complainant-Manjit Kaur stated that her husband, namely, Baljinder Singh had gone to Hoshiarpur on 30.10.2016 to buy household articles. A call was later received from some police official from Civil Hospital, Mahilpur that Baljinder Singh has consumed some poisonous substance and he is being taken to Hoshiarpur. Complainant was told by her husband in presence of her sister-in-law (*Nanad*) Reeta Devi that on that day Pinky had invited him that day to

village Maili. He went there and Pinky, her father, Sarpanch of village Maili and some unidentified persons were already present. They physically assaulted him and humiliated him. Unable to bear the insult, complainant's husband consumed some poisonous substance at the house of Pinky. He died during treatment at the Hospital. An FIR was registered.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. Petitioner has been named merely on the basis of statement of the respondent No.2-complainant. He further submits that, in fact, petitioner was the one who informed the Police regarding deceased's visit to Village Maili at the house of Pinky/accused, where some dispute arose. During investigation, petitioner was found innocent by the police. Testimony of respondent No.2/ complainant was though recorded on 23.08.2017, but yet a belated application under Section 319 Cr. P.C., for summoning petitioner as an additional accused, was moved only on 20.02.2018.

3.1. Learned counsel for the petitioner contends that vide judgment dated 21.04.2023, learned Court below has acquitted prime accused, namely, Pinky Devi of the charge against her. The said judgment is appended as Annexure P-5.

3.2. Learned counsel relies on a decision rendered by the Supreme Court in **Vikas Rathi versus State of U.P. and another¹** to contend that once prime accused has been acquitted after appraisal of entire evidence by the trial Court, no case is made out against the petitioner on the basis of same very evidence to be summoned as an additional accused under Section 319 Cr. P.C.

4. On the other hand, learned State counsel opposes the petition and submits that petitioner has committed a serious offence.

4.1. None appears on behalf of respondent No.2.

5. I have heard learned counsel for the parties and perused the case file.

6. Relevant allegations in the FIR have been mentioned in para 2 above. After completion of investigation, the local police submitted its report Annexure P-4 to the Court, whereby it challaned accused Pinky Devi alone and reported that during

investigation, all the villagers and panchayat members of village Maili had given an application regarding the case of wrongly recording the name of the petitioner and for inquiry in the case. The inquiry was conducted by Shri Raminder Singh, Superintendent of Police, Chabbewal. During inquiry, he had found that Sadhu Ram and the petitioner herein were absolutely innocent and that no other person except Pinky Devi had been involved in the case. Its relevant part is as under:

“xx xx xx. During the investigation, all the villagers and panchayat members of Village Maili gave an application No.5338-SSP dated 04-01-2016 regarding the case of wrongly recording the name of Sarpanch Charanjit Singh and enquiry in the above said case. The enquiry was conducted by Sh. Raminder Singh, Superintendent of Police, Chabbewal. Who during the enquiry have found Sadhu Ram, son of Dhanna Ram and Charanjit Singh, Sarpanch, son of Balvir Singh, residents of Maili absolutely innocent in the said case and it has to prepare challan against main accused Pinky, daughter of Sadhu Ram resident of Maili and submitting it to the court for cognizance. During the investigation, no other person has been involved in the case. On 04-11-2016, viscera of Baljinder Singh was deposited in the Office of Director, Chemical Examiner, Kharar, for examination through Road No.236/21 dated 04-11-16. The Chemical Report result of which has not been received, which will be enclosed with challan on receipt. Investigation of this case has been completed, no further investigation is left. From the investigation so far and statements of witnesses, there are sufficient evidence against accused Pinky Devi, shown in Column No.3, under Section 306 IPC. On the basis of statements of witnesses shown in Column No. 6, challan under Section 306 IPC is being prepared against accused Pinky Devi and sent to the cognizance.”

6.1 Learned trial Court accordingly framed charge against Pinky Devi and proceeded with trial against her alone. During trial, complainant Manjit Kaur and her sister-in-law (Nanad) Reeta Devi were examined as prosecution witnesses. They made statements on the same lines as is the FIR version given in para 2 above. Prosecution then moved application dated 20.02.2018 Annexure P-3 saying that Charanjit Singh petitioner herein had also committed the offence for which he could be tried alongwith Pinky Devi under section 306 IPC. Thereupon, the learned Additional Sessions Judge passed the impugned order dated 14.11.2018 summoning the petitioner as an additional accused to face trial under section 306 IPC alongwith accused Pinky Devi. It is premised on the following reasons:

“6. After hearing rival contentions raised by both sides and after going through testimony of PW1 Manjit Kaur complainant and other evidence which has come on record, it transpired that complainant has categorically stated in her statement Ex. PI on the basis of which FIR of instant case has

been registered that in the Hospital, her husband had told her and her sister-in-law Reeta Devi that Pinky called him on mobile phone to her house where said Pinky Devi, her husband and Sarpanch of village Mail alongwith other unidentified persons gave beatings to him and ridiculed him due to which he consumed poisonous substance. Even, complainant Manjit Kaur while appearing in the Court as PW1 has categorically deposed that her husband told her that on receiving telephonic call from Pinky Devi, he went to her house, where Pinky Devi and some unidentified person including Charanjit Singh, Sarpanch of village gave him beatings and ridiculed him and due to which he consumed some poisonous substance. Similarly, PW2 Reeta Rani has deposed in the Court that her brother told her that Pinky called him at village Maili, where Pinky, her father and Charanjit Singh Sarpanch of village Maili inflicted injuries and harassed and compelled to commit suicide.

7. *Thus, from above said statements of PW1 and PW2 Manjit Kaur and Reeta Devi respectively, it transpired that specific role has been attributed to accused Charanjit Singh Sarpanch of village Maili and prima facie case is made out against him. Inquiry conducted by Police Officer declaring Charanjit Singh as innocent is not binding upon the Court. Moreover, law has been settled by Hon'ble Supreme Court of India in various cases that a person named in FIR, but, against whom police not filing charge sheet or drops the case, can be prosecuted against under Section 319 of the Cr. P.C, if from the evidence collected/produced in the course of any inquiry into or trial of an offence, the Court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused. Accordingly, instant application under Section 319 of the Cr. P.C. is allowed and Charanjit Singh, Sarpanch of village Maili is ordered to be summoned as an additional accused to face trial under Section 306 of the IPC alongwith accused Pinky Devi, for 04.012019."*

6.2 As pointed out above, the statements of complainant Manjit Kaur and her sister-in-law (Nanad) Reeta Devi made during trial are on the same lines as is the FIR version given in para 2 above and/or their statements, if any, recorded by police during investigation. Still, after completion of investigation, the local police submitted its report Annexure P-4 to the Court whereby it had challaned accused Pinky Devi alone and reported that during investigation, no other person had been involved in the case. Learned trial Court accordingly framed charge against Pinky Devi alone and proceeded with trial against her.

6.3 From the above, it is obvious that the statements of complainant Manjit Kaur and her sister-in-law (Nanad) Reeta Devi made during trial were/are on the same lines as per the FIR version and/or their statements, if any, recorded during investigation which were already before the local police. Still, after inquiry by a senior officer of the rank of Superintendent Police, it had submitted the final investigation report Annexure P-4 to the Court, challaned accused Pinky Devi alone

and reported that during inquiry, it was found that the petitioner herein and Sadhu Ram were absolutely innocent and that no other person except Pinky Devi had been involved in the case. On its basis, the learned trial Court framed charge against Pinky Devi accused alone and proceeded with the trial. At that time also, the accusatory statements of complainant Manjit Kaur and her sister-in-law (Nanad) Reeta Devi against the petitioner, which had been recorded by the police, were before the trial Court. If on considering the final investigation report of police Annexure P-4, the court had found any prima facie case against the petitioner for commission of the offence, it could have either straight away proceeded against him for the trial or given other appropriate directions in accordance with law. It did not adopt any such course, which implies that the learned trial court also had agreed with the version of the police in its final investigation report that the petitioner was innocent.

6.4 On a careful reading of section 319 of the Code of Criminal Procedure, I am of the considered opinion that it would be attracted only and if after the submission of the final investigation report by the police to the Court, it appears from evidence subsequently recorded in the course of inquiry into and trial of an offence that any person not being the accused has committed any offence for which such person could be tried together with the accused and the court may then proceed against such person for the offence which he appears to have committed. In present case, it cannot be said that this condition is satisfied. The reason is that the statements of complainant Manjit Kaur and her sister-in-law (Nanad) Reeta Devi made during trial are on the same lines as per the FIR version and/or their statements, if any, recorded during investigation. The same were already before the local police when it submitted the challan against Pinky Devi alone, specifically stating that the petitioner was innocent and absolving him. These statements of complainant Manjit Kaur and PW Reeta Devi were also before the learned trial Court and would have been considered by it at the time of taking cognizance of the offence under section 193 of the Code *ibid* and proceeding with the trial against Pinky Devi alone. It cannot, therefore, be said that after the submission of the final investigation report by the police to the Court and during the course of

subsequent inquiry into and trial of the offence that any new facts came to light showing that the petitioner had committed an offence for which he could be tried together with Pinky Devi accused.

6.5 The statement of complainant Manjit Kaur in the FIR and that of her sister-in-law (Nanad) Reeta Devi recorded by the police under section 161 of the Code are that Baljinder Singh (deceased) had told them that the petitioner herein, Pinky, her father and other unidentified persons were present at the spot in village Maili and they had given him beatings and treated him badly. These statements were already with the police when it submitted the final report of investigation under section 173(3) of the Code. Still, in its final investigation report under section 173(3), the police had stated that during investigation, all the villagers and panchayat members of village Maili had given an application regarding the case of wrongly recording the name of the petitioner and for inquiry in the case; that the inquiry was conducted by Shri Raminder Singh, Superintendent of Police, Chabbewal, during which he had found that the petitioner herein and Sadhu Ram were absolutely innocent and that no other person except Pinky Devi had been involved in the case. The challan was, therefore, filed against Pinky Devi alone. However, when similar statements of complainant Manjit Kaur and her sister-in-law (Nanad) Reeta Devi were subsequently recorded at the trial, prosecution took an about turn and moved an application Annexure P-3 stating that it was clear that the petitioner had also committed the offence for which he could be tried alongwith with accused Pinky Devi u/s 306 IPC and praying that he be summoned and proceeded against accordingly. It is somewhat intriguing that the police/prosecution has taken two diametrically opposite stands on the basis of the same material in the case i.e. the statements of complainant Manjit Kaur and her sister-in-law (Nanad) Reeta Devi recorded by the police during investigation and their subsequent statements on the same lines recorded at the trial read with its own final report of investigation under section 173(3) of the Code.

6.6 While passing the impugned order, the learned trial Court also erred by ignoring the reality that the accusatory statements of complainant Manjit Kaur and her

sister-in-law (Nanad) Reeta Devi were also before it when it had framed charge against Pinky Devi accused alone and proceeded with the trial, implying its agreement with the version of the police in its final investigation report that the petitioner was innocent. As observed above, it cannot be said that after the submission of the final investigation report by the police to the Court and during the course of subsequent inquiry into and trial of the offence that any new facts came to light showing that the petitioner had committed an offence for which he could be tried together with Pinky Devi accused. I have opined above that section 319 of the Code would be attracted only and if after the submission of the final investigation report by the police to the Court, it appears from evidence subsequently recorded in the course of inquiry into and trial of an offence that any person not being the accused has committed any offence for which such person could be tried together with the accused and the court may then proceed against such person for the offence which he appears to have committed. In present case, it cannot be said that this condition is satisfied. The impugned order dated 14.11. 2018 passed by the learned trial Court thereby summoning the petitioner as an additional accused to face trial under section 306 IPC alongwith accused Pinky Devi is not, therefore, legally sustainable.

7. On a Court query, learned State counsel, on instructions from ASI Rajwinder Singh, submits that after acquittal of prime accused, no appeal has been preferred by the State against the judgment of acquittal dated 21.04.2023.

8. After going through the Apex Court judgment in **Vikas Rathi**, I am of the view that exercise of power under Section 319 Cr. P.C. is to be only in extraordinary situations where evidence on record is so overbearing that Court is compelled to use its discretion. Pertinently, in the judgment *ibid* rendered by Supreme Court, offence was of far more serious nature than the one herein as additional accused therein was summoned in a murder trial whereas instant is a case of deceased having committed suicide by consuming some poisonous substance.

9. On an earlier occasion, in some other case, I have had to deal with Section 319 Cr. P.C., wherein broad principles for adding a person as additional accused were

culled out. Reference may be had to my judgment rendered in **Kamaljit Singh versus State of Punjab and others**². Relevant thereof is extracted herein below:

“6. No doubt, Section 319 of the Cr. P.C. allows a court to add any person, who is not an accused before the court, as an accused in an ongoing trial if it appears from the evidence that such person has committed an offense. However, exercise of said power is governed by certain principles, which, inter alia, are as below:

- i. *Prima facie evidence:* The court must have prima facie evidence against the person sought to be added as an accused, i.e. some material on record which, if unrebutted, could lead to the conclusion that the person has committed the offense.
- ii. *Connection to the offense:* The court must find a clear connection between the person sought to be added and the offense. This connection could be established through witness statements, documentary evidence, or any other relevant material that links the person to the commission of the offense.
- iii. *Judicial discretion:* The power conferred under Section 319 is discretionary and should be exercised judiciously by the court. The court must consider all the facts and circumstances of the case and exercise its discretion based on sound judicial principles.
- iv. *Fair opportunity:* The person sought to be added as an accused should be given a fair opportunity to present their case and defend themselves against the charges.
- v. *Sufficiency of evidence:* The court should assess the sufficiency of evidence against the person sought to be added. The evidence should be substantial and reliable enough to create a strong probability of the person's involvement in the offense.
- vi. *Stage of trial:* The court can exercise its power under Section 319 at any stage of the trial, whether it is during the inquiry, trial, or even after the judgment has been pronounced. However, the power should be exercised cautiously, especially when the trial is at an advanced stage, to ensure fairness and avoid prejudice.

Aforesaid principles ensure that the power under Section 319 is used judiciously and in accordance with the principles of natural justice, while allowing the court to effectively deal with situations where additional persons are found to be involved in the commission of an offense.”

10. Reference may also be had to a Constitution Bench judgment of Apex Court in **Hardeep Singh versus State of Punjab and others**³. Scope of section 319 Cr.P.C. for the purpose of summoning additional accused was considered therein and five questions were framed to enunciate the broad principles. Supreme Court has addressed various questions framed by it, as under:

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

Question Nos. 1 & III

²CRR-2808-2019 (O&M), decided on 07.07.2023

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.

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.

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.”

11. In view of the aforesaid case law and as an upshot of the discussion in the preceding paragraphs, the instant revision is allowed. Impugned order dated 14.11.2018 is set aside.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 27, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No