

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

**CRM-M-8161-2020 (O&M)
Date of Decision: 14.03.2023**

AJIT SINGH

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ranjodh Singh Sidhu, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARSH BUNGER, J.

The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, seeking setting aside of order dated 04.11.2019 (Annexure P-6) passed by the Court of learned Additional Sessions Judge, Tarn Taran; whereby, the revision petition filed by private respondents No.2 and 3 against an order dated 15.12.2017 (Annexure P-4) passed by the Court of learned Chief Judicial Magistrate, Tarn Taran; was allowed and consequently, the order dated 15.12.2017 (Annexure P-4) passed by trial Court summoning respondents No.2 and 3 as additional accused upon application under Section 319 of the Code of Criminal Procedure (for short 'the Cr.P.C.') filed by the present petitioner (Ajit Singh) has been set aside.

2. Briefly, on the complaint of petitioner-Ajit Singh, one case i.e. FIR No.108 dated 18.09.2014 under Sections 452, 326, 325, 324, 323, 427, 506, 148, 149 of the Indian Penal Code (for short 'the IPC') was registered against Ranjit Singh and others. A perusal of challan under Section 173 Cr.P.C. (Annexure P-9) reveals that as per the complainant, Bhajan Kaur widow of Sheetal Singh and Sukhbir Kaur wife of

Pargat Singh, had purchased 18/19 marlas of land around seven years ago from complainant's brother Gurbhajan Singh; whereon, they had constructed residential house and they were passing through vacant land of complainant. The complainant is stated to have constructed his residential house in his own land by raising boundary wall towards road side by leaving a passage of 11 ft. for Bhajan Kaur etc. As per complainant, Bhajan Kaur etc. were laying claim of street through area of complainant. On 17.09.2014, the complainant was present at his house along with his son Jugraj Singh, wife-Harjit Kaur and one Partap Singh; where his nephew Balraj Singh had come to see him. It was stated in the complaint that in the house of the complainant, a *mason* had been working along with the labourers. At about 12:30 p.m., Bhajan Kaur, empty handed, Ranjit Singh, armed with baseball bat, Sandeep Singh son of Baldev Singh, armed with *gandasi*, Karamjit Singh son of Sital Singh, armed with *kirpan*, Major Singh son of Swaran Singh, armed with *kasian*, Balkar Singh son of Mukhtar Singh, armed with *barsha*, Sukhdev Singh son of Mukhtar Singh, armed with *dattar*, Lovepreet Singh son of Sajjan Singh, armed with *dattar*, Khushpreet Singh son of Amrik Singh, armed with *kirpan*, Gurmeet Singh son of Charan Singh, armed with *dattar*, came on vehicle bearing Registration no.HR-06-Q-0039. Nirmal Singh son of Baldev Singh, armed with *gandasi*, Mandeep Singh son of Baldev Singh, armed with *kirpan*, Amrik Singh son of Charan Singh, empty handed, came on Sonalika tractor, which was being driven by Dilbag Singh along with Jarmanjit Singh, armed with *barsha*. It is alleged that Bhajan Kaur, raised a *lalkara* by saying catch hold of them and teach them a lesson for not giving us direct street and thereafter, the accused entered into their house. Ranjit Singh, is alleged to have given a *baseball bat blow* to the

complainant hitting him on his face. Sandeep Singh allegedly gave *gandasi blow* from the blunt side hitting on the left arm elbow of the complainant; whereupon, he raised noise “*Mar Ditta, Mar Ditta*”. His nephew Balraj Singh, son Jugraj Singh and wife Harjit Kaur, came to save him. Then the assailant gave beatings to them with their weapons. It is also alleged that Dilbag Singh, tried to demolish their wall with tractor. When they all raised loud voices, his brother Buta Singh also came at the spot, who also spoke loudly “*na maro na maro*”. The assailants are alleged to have given beatings to him and brick bats were also thrown and thereafter, they escaped on their vehicles.

3. During investigation, Nirmal Singh @ Nirmaljit Singh son of Baldev Singh, Mandeep Singh son of Baldev Singh and Jarmanjit Singh, were declared as innocent during the inquiry conducted by S.P. (Investigation), Tarn Taran and report under Section 173(2) of the Cr.P.C was submitted against other co-accused.

4. Thereafter, it appears that the statement of complainant (Ajit Singh) was recorded as PW-1 and an application under Section 319 Cr.P.C was filed before the trial Court by the prosecution. The learned trial Court, vide order dated 15.12.2017, partly allowed the application under Section 319 Cr.P.C., whereby, the application under Section 319 Cr.P.C for summoning Jarmanjit Singh, as additional accused was dismissed. However, the application for summoning respondents No.2 and 3 herein as additional accused, was allowed.

5. Being aggrieved against the aforesaid order dated 15.12.2017 passed by learned Chief Judicial Magistrate, Tarn Taran, respondents No.2 and 3 filed a revision petition before the Court of learned Additional

Sessions Judge, Tarn Taran, which was allowed vide order dated 04.11.2019 and the order dated 15.12.2017 (Annexure P-4) passed by trial Court on the application under Section 319 of the Cr.P.C. filed by petitioner-Ajit Singh for summoning respondents No.2 and 3 as additional accused, was set aside. Accordingly, the petitioner-complainant (Ajit Singh) had filed the present petition.

6. Learned counsel for the petitioner submits that the learned Revisional Court has erred in law and facts in reversing the order passed by the trial Court. He further submits that so far as the plea raised by respondent No.2 that he was at Harike on the date of occurrence, is concerned, it is submitted that said Harike area comes under the Forest Department, Ferozepur Division, which is less than 15 kms. from the place of occurrence and even Ferozepur is about 60 kms. and even if for the sake of arguments, it is believed that he was at Ferozepur on that day, the possibility of his presence at the place of occurrence cannot be ruled out. Learned counsel further submits that respondent No.3 cannot be permitted to take the benefit of mistake with regard to mentioning his name as Mandeep Singh instead of Hardeep Singh. Learned counsel for the petitioner has further sought to place reliance upon the statement of PW-5 Buta Singh, showing that there are specific allegations against respondents No.2 and 3.

7. On the other hand, a status report by way of affidavit of Sh. Kamaljit Singh, PPS, Security and Court Coordination, Tarn Taran, District Tarn Taran, has been filed on behalf of respondent-State of Punjab, which is already on record.

8. Learned State counsel has made submissions by referring to para Nos.4 and 9 of status report, wherein the following stand has been taken :-

“4. That during the investigation of the present case, Jarmandeep Singh son of Kuldeep Singh @ Kala, resident of Luhar, was declared as innocent vide No.853-D dated 24.07.2015 and during the investigation found that Jarmandeep Singh doing the diploma of Culinary Skill from National Finishing & Cookery Institute and his batch No.03 and Roll No.NFCI/DICS/1404/005 and the timing of his batch is 10:30 AM to 02:00 PM. According to the record of attendance registered dated 16/17/18.09.2015 Jarmanjit Singh has present in the class. So Jarmanjit Singh is proven innocent in the present case. It is further submitted that Nirmaldeep Singh and Mandeep Singh sons of Baldev Singh, resident of Chak Kalan have been declared as innocent vide representation No.945-D dated 18.11.2015 and during the investigation found that Nirmaldeep Singh is an employee of the Forest Division, Department of Forest Animal, Ferozepur, and time of occurrence of the present case Nirmaldeep Singh is present on his duty on 17.09.2014. The presence of Nirmaldeep Singh got proved through the recorded statement of Jagminder Singh son of Balbir Singh, resident of Chohla Sahib, who is employed in the same department, and also letter No.2211 dated 13.02.2015 of Forest Division, Ferozepur. Moreover, Mandeep Singh doing the job as Sales Executive in Niyaz Electronics in Behrin Country for the last 4 years he come on leave for two months from 31/01/2014 to 04/04/2014, and approval of the finding proved by the Authority of Niyaz Electronics, Manama Kingdom of Barain also his presence was shown on the stamp of the passport of Mandeep Singh.

5 to 8.

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9. *That in the final police report also explained about conducted the enquiries vide its numbers for declaring as innocents to Respondents No.2 and 3 and Jarmanjit Singh son of Kuldeep Singh @ Kalan resident of Village Lohar, District Tarn Taran. It is further submitted that in the present case, final report under Section 173 Cr.P.C has been presented in the Ld. Trial Court on 27.04.2016 and occurrence has been occurred on 17.09.2014. The statement of petitioner has been recorded on 27.11.2017. Now for all these long three years there has not been any document on the file which shows that the petitioner even suffered any supplementary statement to the investigating officer with respect to his inadvertence qua naming of Mandeep Singh instead of Hardeep Singh. It is more further submitted that Boota Singh and the statement of petitioner is not being supporting his earlier statement before the investigating officer rather it is to improving the case of the prosecution in as much as petitioner in his first version to the investigation officer did not utter any specific attribution of causing any injury against accused Nirmal Singh and even Hardeep Singh.”*

9. I have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

10. The principles of law with reference to exercise of jurisdiction under Section 319 Cr.P.C. are well settled.

11. The Constitution Bench of Hon'ble Supreme Court of India in ***Hardeep Singh and Ors. v. State of Punjab &Ors., (2014) 3 SCC 92,*** opined as under:

"105. Power u/s 319 CrPC 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 laid 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 laid before the court, not necessarily tested on the anvil of cross-examination, it requires much strong evidence that near 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 u/S 319 CrPC".

(emphasis supplied)

12. In ***Sagar v. State of U.P. and Anr., (2022) 6 SCC 389***, the Hon'ble Apex Court stated as under:

"9. The Constitution Bench has given a caution that power under Section [319](#) of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as notice above 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...."

13. Coming to the facts of the case, perusal of order dated 15.12.2017 passed by learned Chief Judicial Magistrate, Tarn Taran, would show that the trial Court went by the deposition of the petitioner/complainant (Ajit Singh) with no further material to support his so-called verbal/ocular version.

14. A perusal of the file would reveal that the trial Court had simply taken into consideration the statement of PW-1 Ajit Singh, which was more or less the same as was his statement under Section 161 of the Cr.P.C., which was recorded during investigation of the case.

15. A perusal of the file further reveals that the stand taken by the respondents No.2 and 3 was that respondent No.2 is in government service and is posted in the Forest Department and on the date of occurrence, he was not present at the spot. Similarly, respondent No.3 had also taken a categorical stand that on the date of occurrence, he was in Bahrain and was not present at the place of occurrence.

16. Taking into account the afore-stated stand of respondents No.2 and 3, they were declared innocent during investigation.

17. No doubt, the trial Court is competent to exercise its power under Section 319 of the Cr.P.C. on the basis of statement recorded before it in examination-in-chief also. However, in the peculiar facts and circumstances of the instant case, when respondents No.2 and 3 were declared innocent on the ground that they were not present at the time of occurrence, the trial Court was at least duty bound to look into the same while forming a *prima facie* opinion and to see as to whether much stronger evidence than mere probabilities of the complicity of respondents No.2 and 3 herein had come on record or not.

18. A perusal of the order passed by the trial Court would show that no satisfaction to this effect has been recorded therein.

19. It is settled proposition of law that 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 other words, a person should be summoned under Section 319 Cr.P.C., 1973 only when the Court finds that evidence on record is such which would reasonably lead to conviction of person sought to be summoned. Further, when the accused is found

innocent by the Investigating Agency, mere statement of complainant vide which the complainant reiterates the allegations already made in the complaint, is not sufficient to summon the said accused under Section 319 Cr.P.C., 1973.

20. The statement of the petitioner/complainant which was recorded during trial, does not introduce any new evidence to enable the Court to form a *prima facie* opinion to summon respondents No.2 and 3 herein under Section 319 Cr.P.C. The statement of the petitioner/complainant in the FIR as well as while stepping into the witness box as PW-1, is primarily the same, barring a few improvement therein. *Prima facie*, there was nothing available with the trial Court to conclude that respondents No.2 and 3 herein were present at the spot, especially, when they were declared innocent during investigation by the Investigating Agency on the said ground.

21. Reliance upon the statement of Buta Singh, which was recorded on 25.01.2019, is also mis-conceived as the same was recorded subsequent to filing of application under Section 319 Cr.P.C.

22. Be that as it may, even if the said statement of Buta Singh is compared with the statement of Ajit Singh (PW-1), it is more or less the same as was stated by Ajit Singh.

23. Further, the learned Revisional Court, while setting aside the order dated 15.12.2017 (Annexure P-4) passed by trial Court on the application under Section 319 Cr.P.C., filed by the petitioner/complainant, has returned the following findings :-

“11. At the first instance the statement so suffered by the complainant to the police which is his first version does not find mention of any Hardeep Singh son of

Baldev Singh to be present at the spot. Even there has not been any attribution of causing any injury upon Hardeep Singh son of Baldev Singh of any kind. Even there has been no specific attribution of causing any specific injury to any specific person by Nirmal Singh son of Baldev Singh as well. However, when complainant PW1 Ajit Singh was examined in the Court he leveled specific allegations against Nirmal Singh that he gave gandasi blow to Buta Singh who was not examined by prosecution. At the same time he levelled allegations against Hardeep Singh son of Baldev Singh that he gave Kirpan blow to Buta Singh. At the end of the statement he stated that Hardeep Singh son of Baldev Singh who was inadvertently mentioned as Mandeep Singh alias Hardeep Singh son of Baldev Singh have been kept in column No.2 along with Nirmal Singh and Jaramjit Singh but they have participated in the commission of the offence. Now his statement to the police shows that nowhere he mentioned as Mandeep Singh alias Hardeep Singh son of Baldev Singh. So clearly these are two persons. As of now before invoking power under Section 319 Cr.P.C. the learned Trial Court has only before it the statement of complainant only and not of any other injured witness specifically PW Boota Singh and the statement of the complainant is not being supporting his earlier statement to the police rather it is to improving the case of the prosecution in as much as he in his first version to the police did not utter any specific attribution of causing any injury against accused Nirmal Singh and even Hardeep Singh.

12. The challan has been filed in the matter of present case on 27.04.2016. The occurrence has been on 17.09.2014. The statement of complainant has been recorded on 27.11.2017. Now for all these long three years there has not been any document on the file which shows that the complainant even suffered any supplementary

statement to the police with respect to his inadvertence qua naming of Mandeep Singh instead of Hardeep Singh.

13. *The essence of law under Section 319 Cr.P.C as above discussed has been that the power under Section 319 Cr.P.C can be exercised by the Trial Court though at any stage during trial to summon any person as an accused to face the trial if it appears from the evidence that such person has committed any offence for which such person can be tried together with the accused already being tried. It is also settled principle of law that though only a prima facie case is to be established from the evidence led before the court but it requires much stronger evidence than mere probabilities of the complicity of the accused. The test 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. While holding so this court is even supported by pronouncement of Hon'ble Supreme Court of India in its Constitutional Bench observation in case “**Hardeep Singh Vs. State of Punjab**” 2014(3) SCC 92. Now in the absence of such satisfaction the court should refrain from exercising power under Section 319 Cr.P.C. That aspect of the essence of law under Section 319 Cr.P.C would be more clear when it appears that the words that has been mentioned in the Section are “if it appears from the evidence that any person not being the accused has committed any offence” and the purpose for providing such thing would be clear from the words “for which such person can be tried together with the accused.” Now here the words used are not “for which such person can be convicted.” In the light of above principle of law, considering the present case and having regard to the only statement of PW1 complainant having improved version in the statement, having named a person not named by him earlier to the police and even having*

regard to the fact there being not his supplementary statement to the police as well for all these three years, this court is of the view that the learned Trial Court had not exercised the power so vested in it in a judicial manner. The impugned order shows that the learned Trial Court was just swayed by the fact that PW1 attributed acts against the revision petitioners in his statement, however, learned Trial Court, was oblivious of the fact that said PW1 did not level any act against any of the revision petitioner in the statement to the police, he even did not mention anything against applicant/accused Hardeep Singh and rather named one Mandeep Singh but during inquiry was found to be in Bahrain at the date of occurrence. Furthermore learned Trial Court also did not hold on the point whether accused committed any offence for which they can be tried together alongwith accused already facing trial which has also been essence of law to summon an additional accused under Section 319 Cr.P.C. The learned Trial Court is just recording the finding that in view of the evidence of PW1 the court finds substantial grounds to summon Nirmal Singh and Hardeep Singh as an additional accused which has not been essence of law to summon additional accused under Section 319 Cr.P.C. So this court is of the view that learned Trial Court erred in law in summoning both the revision petitioners as additional accused on the basis of evidence that had been before it. Hence Present Revision Petition stands allowed. Finding of learned Trial Court are set aside. Lower court record along with copy of judgment be sent back. File be consigned to record room.”

24. A perusal of findings returned by Revisional Court below would manifest that the same are in accordance with law with reference to exercise of jurisdiction under Section 319 Cr.P.C. and there is no illegality or perversity therein.

25. Keeping in view the above-said legal position and also the discussion made above, this Court is of the considered view that no ground is made out to interfere with the impugned order dated 04.11.2019 (Annexure P-6) passed by the Court of Additional Sessions Judge, Tarn Taran.

26. Accordingly, the instant petition is dismissed, being bereft of any merit.

27. All pending miscellaneous application/s, if any, shall also stands closed.

March 14, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No