

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

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CRM-M-11548-2022
Date of decision: 11.10.2023

Gayatri

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. S. L. Barwala, Advocate for the petitioner

Mr. Dhruv Sihag, AAG, Haryana

Mr. Anil Kumar Malik, Advocate for respondent No. 2

AMAN CHAUDHARY, J.

1. The challenge in the present petition filed under Section 482 CrPC, is to the order dated 07.01.2022 passed by learned Additional Sessions Judge, Panipat in revision, whereby the order dated 20.07.2019 passed by learned Judicial Magistrate, Panipat allowing the application filed under Section 319 CrPC was set aside.

2. Summarily the facts emerging from the FIR are that the complainant-Gayatri was present at her home with grandson, when the accused forcibly entered her house and accused-Minakshi, daughter-in-law of the complainant, caught hold of her neck and broke the finger of her left hand. Respondent no.2-Bijender-father of Minakshi, gave a kick blow on her nose, resultantly causing a fracture. Thereafter, they left with the grandson, while

threatening to kill her in the future. She was then taken to the hospital, where her statement was got recorded, upon which an FIR was lodged.

3. Learned counsel for the petitioner submits that respondent No. 2 had been wrongly declared innocent by the investigating agency, despite the fact that in the FIR, there are specific allegations against respondent No. 2 of having given a blow on the nose of the complainant. It having been reiterated by the complainant-petitioner while appearing as PW-1, Annexure P-5 and the injury was corroborated by medico legal report dated 13.07.2017 and the advice for conducting CT scan of nasal bone to rule out fracture bone, the application filed under Section 319 Cr.P.C. was rightly allowed by the trial Court. However, on a challenge made thereto, the Revisional Court wrongly set aside the order on the ground that the trial Court has not appreciated the fact that the injury was not corroborated by the medical statement.

4. Learned State counsel submits that in an enquiry that was conducted, respondent No.2 had been found to have come to the spot after the incident. However, he is unable to controvert the statement recorded by the complainant specifically attributing injury to him, before the Court, as also the MLR.

5. Learned counsel for respondent No.2 submits that the Revisional Court after appreciating the material on record, has rightly passed the impugned order, as there was no material before the trial Court to summon him under Section 319 CrPC. Thus, he prays for the dismissal of the present petition.

6. This Court has taken note of the rival submissions canvassed.

7. Given the facts of the present case, a reference to order passed by the trial Court is necessitated, the relevant portion whereof reads thus:

“Perusal of the file reflects that not only is the version of the complainant in her statement made to the police and her evidence recorded before the court is the same regarding the specific injuries allegedly caused to her by proposed accused Bijender, but her claim in this regard is duly corroborated by medical evidence on record. Further, perusal of final report under Section 173 Cr.PC filed by the police, investigations against the proposed accused were stated to be dropped merely on the ground that he was found innocent. However, there is no statement under Section 161 Cr.PC or anything else placed on record which can reveal the basis on which such conclusion regarding innocence of the proposed accused was drawn by the police. In these circumstances, it appears that the proposed accused also committed the offence for which he could be tried together with accused Meenakshi.

In view of foregoing discussion, the instant application is allowed. Summons to be issued to accused Bijender S/o Ram Swaroop for 19.09.2013.”

8. It is apposite to make a reference to Section 319 CrPC, which reads thus:

“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 subsection (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 offence upon which the inquiry or trial was commenced.”

9. The foregoing provision employs the term ‘appears’, thereby empowering the court to proceed against any person, other than the accused, who has, as per the record, evidently perpetrated the offence. The underlying object of rule of law being to ensure that none, who may even appear to have committed an offence, goes scott free.

10. A profitable reference can be made to the judgment by Constitution Bench of Hon’ble The Supreme Court, in **Hardeep Singh vs. State of Punjab and Others**, 2014 (3) SCC 92, a landmark, wherein Section 319 CrPC was explicitly interpreted and it was held thus:

“12. Section 319 CrPC springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr. PC.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial.

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95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two- Judge Bench of this Court in *Vikas v. State of Rajasthan*, held that on the *objective satisfaction* of the court a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

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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 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.”

11. The judgment in **Manjeet Singh vs. State of Haryana**, 2021 SCC OnLine SC 632, can be gainfully referred to, wherein Hon’ble The Supreme Court, set aside the judgment of the High Court affirming the order of the trial Court whereby the application filed under Section 319 CrPC, had been dismissed. The aforesaid provision of law in terms of its scope and ambit was summarised thus:

- “(i) That while exercising the powers under Section 319 CrPC and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;
- (ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;
- (iii) the law has been properly codified and modified by the legislature under the CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;
- (iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;
- (v) where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial;
- (vi) Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it;
- (vii) the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be

inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency;

(viii) Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;

(ix) the power under Section 319(1) CrPC can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre-trial stage intended to put the process into motion;

(x) the court can exercise the power under Section 319 CrPC only after the trial proceeds and commences with the recording of the evidence;

(xi) the word “evidence” in Section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;

(xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319 CrPC is to be exercised and not on the basis of material collected during the investigation;

(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s);

(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under Section 319 CrPC can be exercised;

(xv) that power under Section 319 CrPC can be exercised even at the stage of completion of examination-in-chief and the court need not has to wait till the said evidence is tested on cross-examination;

(xvi) 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 charge-sheet has gone, in that case also, the Court is still not powerless by virtue of Section 319 CrPC and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided

during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);

(xvii) while exercising the powers under Section 319 CrPC the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.”

12. Hon’ble The Supreme Court whilst allowing the application filed by the prosecution under Section 319 CrPC in **Manjeet Singh** (supra), observed the allegations against the persons who were being summoned as additional accused, had been levelled by the complainant from the very inception of the FIR and subsequently too in his deposition but still the application came to be dismissed by the Courts.

13. This Court is refraining itself from delving deeper in the matter, it being not the stage appropriate for it, however, considering the entire gamut of facts, the case set up for summoning the respondent does not get enveloped into the inscrutable smoke of doubt, the complainant having from the very outset alleged to receiving of a kick blow on her nose at the hands of respondent No.2- Bijender Singh, thereby causing an injury, a fact that was not merely reiterated for the sake of it by her whilst getting the testimony recorded as PW-1 but had also found medical corroboration, that had weighed with the trial Court, which had thus exercised its power under Section 319 CrPC by examining the matter in the right perspective. Pointed attention of this Court in this regard was drawn to the MLR placed on record as Annexure P-6, whereby on account of pain and swelling on the nose, the doctor had advised CT scan to rule out the possibility of nasal fracture.

14. The Revisional Court erroneously arrived at a conclusion that the trial

Court had wrongly recorded that there was medical evidence to support the ocular version, which is contrary to record, as is manifestly apparent from the MLR. In **Sandeep Kumar vs. State of Haryana**, 2023 SCC OnLine SC 888 Hon'ble The Supreme Court had held that, "The entire purpose of criminal trial is to go to the truth of the matter. Once there is satisfaction of the Court that there is evidence before it that an accused has committed an offence, the court can proceed against such a person. At the stage of summoning an accused, there has to be a prima facie satisfaction of the Court..." The order of the trial Court allowing the application under Section 319 CrPC had been quashed by the High Court by observing that there was no material on record to summon the petitioner, as an additional accused, he having been found innocent during investigation and it could not even be established on record whether he was attributed any injury and moreover as per the version of the complainant himself, the petitioner had allegedly fled away from the spot, which was set aside by holding that, "...In our opinion, whereas the trial court was absolutely correct to have summoned the accused based on the evidence of PW-9, the High Court committed a grave error in allowing the revision of the accused. Under the facts and circumstances of the case and on the powers of the Court under Section 319 and based on the evidence of PW-9, it was absolutely necessary for the trial court to have summoned the three accused, including the revisionist. The reasoning given by the High Court, cannot be accepted at the stage of consideration of application under Section 319 Cr.PC. The merits of the evidence has to be appreciated only during the trial, by cross examination of the witnesses and scrutiny of the Court. This is not to be done at the stage of Section 319, though this is precisely what the High Court has done in the present case..."

15. Shedding light on the powers bestowed under Section 319 Cr.P.C. to summon a person who, from the evidence, appeared to have a role in the commission of the offence, the order passed by the trial Court to summon the appellant who was not initially arraigned as an accused, as additional accused only on the statements of witnesses, was upheld by Hon'ble The Supreme Court in **Sukhpal Singh Khaira vs. State of Punjab**, (2023) 1 SCC 289.

16. The entire effort, therefore, is not to allow the real perpetrator of an offence to get away unpunished. It is with the said object in mind that a constructive and purposive interpretation should be adopted that advances the cause of justice and does not dilute the intention of the statute conferring powers on the court to carry out the avowed object and purpose to try the person to the satisfaction of the court as an accomplice in the commission of the offence that is the subject matter of trial. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence, were the observations of Hon'ble The Supreme Court in **Yashodhan Singh vs. State of U.P.**, 2023 SCC OnLine SC 890, wherein it held that, "...this Court observed in *Hardeep Singh* that if the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial."

17. Applying the legal principles enumerated hereinabove to the facts and circumstances of the case, this Court finds merit in the present petition. Sequentially, the impugned order dated 20.07.2019 is set aside, while affirming the order passed by the trial Court.

18. The observations made hereinabove are only for the purpose of adjudication of the present petition and shall not be construed as an expression of opinion on the merits of the case.

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

(AMAN CHAUDHARY)
JUDGE

11.10.2023
Mehak

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