

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-11355-2016
Date of decision :10.02.2023

TARBALBIR SINGH

... Petitioner

Versus

STATE OF PUNJAB & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. P.S. Alhuwalia, Advocate
for the petitioner.

Ms. Navreet Kaur Barnala, Asstt. A.G., Punjab.

Mr. A.K. Garg, Advocate for
Mr. Amarjit Markan, Advocate
for respondent Nos.2 to 4.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 20.01.2016 (Annexure P-5) passed by the Judicial Magistrate, 1st Class, Amritsar as well as the order dated 26.02.2016 (Annexure P-7) passed by the Additional Sessions Judge, Amritsar, whereby both the Courts below have not summoned the accused-respondent Nos.2 to 4 as additional accused while exercising powers under Section 319 Cr.P.C. in case FIR No.09 dated 22.01.2010 registered at Police Station E-Division, Amritsar for the offences punishable under Sections 420, 120-B, 182 and 506 IPC.

2. The brief facts of the case as emanating from the pleadings are that an FIR No.09 dated 22.01.2010 came to be registered at the instance of complainant-petitioner Tarbalbir Singh Pannu son of late S. Sakattar Singh Pannu and Gursheer Singh Pannu son of T.S. Pannu. In

the FIR, allegations were levelled against five accused, namely, Ashwani Sharma, Karuna Kumari wife of Ashwani Sharma (respondent No.2), Aarish Sharma (respondent No.3) son of Ashwani Sharma, Rajiv Kumar (respondent No.4) son of Raj Kumar (brother-in-law) of Ashwani Sharma and Taranjit Singh. The allegations were that all the accused induced the complainants for carrying on the business of trading of gold through bank. A meeting took place at the residents of the complainants at Chandigarh in September, 2006. Later, accused No.1 introduced accused No.5 (Taranjit Singh) to the complainants and projected him as an expert on gold trading activities. The complainants having full faith in the accused formed a partnership firm on 04.10.2006 under the name and style of M/s Pannu Commodities. The investment to the extent of 100 per cent was of the complainants in equal shares and accused No.1 and accused No.5 were working partners without having invested in the Firm. The Firm started business at Amritsar. A bank account was also opened on behalf of the said Firm at Punjab National Bank, Akali Market, Amritsar on 13.10.2006. Thereafter, accused Nos.1, 2 (respondent No.2-Karuna Sharma) and 3 (respondent No.3-Aarish Sharma) took Rs.80,00,000/- and Rs.70,00,000/- on two different occasions to start business. Gursher Singh Pannu gave a blank signed cheque-book to accused No.5 in presence of the other accused. Subsequently, a sum of Rs.1,25,00,000/- was deposited in the account of the firm and a further amount of Rs.13,60,000/- and Rs.25,00,000/- was taken thereafter by accused No.1 on the pretext of depositing the same in the bank account. It was agreed that the gold would be purchased through a nationalized bank but with a purpose to play fraud, the accused

in collusion with each other instead of purchasing gold from a bank, 15 kgs gold was purchased from a private jeweller at Ludhiana for sum of Rs.1,38,46,400/-. Accused No.5 took a consignment of 13 kgs gold on 05.01.2007 and 2 kgs on 10.01.2007. It was paid for by the complainants. In the month of March, 2007, the complainants asked the accused to provide details of transactions executed by them and also to give them their (complainant's) share of profit. Both the accused promised to provide details and give a share of the profit by 15.03.2007. Thereafter, more time was sought. Later, accused No.1 informed the complainants that accused No.5 had run away with the money and gold. The accused No.1 promised to repay the entire money by 14.04.2007. However, the complainants were shocked when they were implicated in FIR at Police Station Civil Lines, Amritsar under Sections 342, 448, 504, 506 and 34 IPC. Accused No.2 had falsely informed the police that her husband, accused No.1 had been abducted. Thus, all the accused had committed inducement fraud, cheating, criminal breach of trust in collusion with each other. Accused No.1 and accused No.4 along with all family members also helped accused No.5 to flee from Amritsar.

Based on the aforementioned allegations, FIR No.09 dated 22.01.2010 came to be registered at Police Station E-Division, Amritsar for the offences punishable under Sections 420, 120-B, 182 and 506 IPC.

3. Being aggrieved with the registration of the FIR, accused No.1-Ashwani Kumar submitted an application against the registration of the aforesaid case stating that he was innocent. An inquiry took place and ultimately accused No.2/respondent No.2-Karuna Sharma, accused No.3/respondent No.3-Aarish Sharma and accused No.4/respondent

No.4-Rajiv Kumar came to be exonerated. The Investigating Agency found that there was no evidence against them and nor did they have any connection to the gold business. They had not affixed their signatures on any documents and were not a party to the partnership deed. During the course of inquiry, one Avtar Singh alias Neeta who had brought gold from Rail Lal Kimti Rai Firm was nominated as an accused. The copy of the inquiry report of the ACP, Central, Amritsar City is attached as Annexure R-2.

The said Inquiry Report was approved by the DCP, Amritsar. Based on the aforementioned inquiry, the report under Section 173(2) Cr.P.C. came to be submitted against Ashwani Sharma and Avtar Singh alias Neeta. Taranjit Singh could not be arrested till then and was declared a proclaimed offender. The private respondents were placed in Column No.2. The copy of the report under Section 173 Cr.P.C. dated 30.05.2011 is attached as Annexure R-3.

4. Meanwhile, the first petition for quashing which was filed was rendered infructuous as the respondent-accused had by then been exonerated during police investigation.

5. Thereafter, charges came to be framed against the accused facing Trial namely, Ashwani Kumar, Avtar Singh alias Neeta and Taranjit Singh under Sections 420, 120-B, 506, 120-B and 182 read with 120-B IPC vide order dated 27.03.2012 (Annexure P-2)

6. Pursuant thereto, the statement of one of the complainants Tarbalbir Singh Pannu was recorded as PW-4. As per the said statement, on 16.10.2006, Ashwani Kumar along with his son Aarish Sharma and wife Karuna Kumari and brother-in-law Rajeev came to the complainant

at Chandigarh, where they were entrusted with 5 kgs of gold and Rs.37.5 lakhs. The said entrustment was in the presence of Gursher Singh. On 20.10.2006 again, the three persons namely Ashwani Kumar, his wife Karuna Kumari and Rajeev Kumar (brother-in-law) came to him (complainant) at his residence wherein they were handed over 5 kgs gold along with Rs.27.5 lakhs in the presence of Gursher Singh. On 25.10.2006, Ashwani Kumar his wife Karuna Kumar and son Aarish and Rajeev Kumar son of Raj Kumar were again handed over Rs.25,00,000/- in the presence of Gursher Singh by the complainant at Chandigarh. Rs.1.25 crores were transferred in the firm's account on 19.12.2006. On 05.01.2007, gold worth Rs.1,20,00,000/- weighing 13 kgs was purchased from Civil Lines, Ludhiana and not from the bank. On 09.01.2007, Rs.13,60,000/- lakhs was deposited in the firm's account. On 10.01.2007, 2 kgs of gold was purchased for an amount of Rs.18,46,400/- from the market. On being asked regarding the profit Ashwani Kumar informed him (complainant) that Taranjit Singh had taken some amount of money and gold and had run away. Ashwani Kumar promised him (complainant) to settle the matter along with the accounts but nothing was done about the same. Ultimately, he (complainant) and his son Gursher Singh came to be implicated in FIR No.106 dated 15.04.2007 registered under Sections 342, 448, 506, 34 IPC at Police Station Civil Line, Amritsar, where they were subsequently exonerated. Thus, as per his deposition all the accused had committed the offences in question. The copy of the deposition of the petitioner/complainant No.1-Tarbalbir Singh is annexed as Annexure P-3 to the petition.

7. Subsequent thereto, an application was moved under Section 319 Cr.P.C. for summoning respondent Nos.2, 3 and 4. The copy of the said application is attached as Annexure P-4.

8. The Court of Judicial Magistrate, 1st Class, Amritsar vide order dated 20.01.2016 (Annexure P-5) came to the conclusion that the evidence on the file was insufficient to convict the accused and that other than the statement of the complainant given in his examination-in-chief, there was no other evidence available to summon the proposed accused. Therefore, the application under Section 319 Cr.P.C. came to be dismissed.

9. The petitioner/complainant preferred a revision petition against the aforementioned order. The copy of the revision petition dated 05.02.2016 is attached as Annexure P-6.

10. The Revisional Court came to the finding that the accused sought to be summoned were not partners in M/s Pannu Commodities but had been implicated being family members of Ashwani Sharma. The statement of the complainant in the absence of any other evidence was insufficient to summon the accused and the evidence available on record could not reasonably lead to the conviction of the proposed accused. The copy of the order dated 26.02.2016 passed by the Additional Sessions Judge, Amritsar is annexed as Annexure P-7.

11. The aforementioned orders have been challenged in the present petition. The arguments raised in this petition are to the effect that firstly, there was sufficient evidence to summon the private respondents and that secondly, a wrong test had been applied for adjudicating upon the application under Section 319 Cr.P.C. that the

evidence lead, must be such that there must be likelihood of their conviction. In fact, all that the Court was required to examine was as to whether there was more than a *prima facie* case to summon the accused as has been enumerated in various judgments of the Hon'ble Supreme Court including in **Hardeep Singh Versus State of Punjab (2014) RCR Criminal 623.**

12. A reply dated 12.09.2018 has been submitted on behalf of respondent Nos.2 to 4. The thrust of the reply is that the respondents had been falsely implicated being family members of Ashwani Sharma. They were not a party to the partnership. The complainant had significantly improved his version while deposing in Court and the evidence on record was insufficient to summon the respondents-accused.

13. When this case had come up for hearing on 04.04.2016, the following order was passed:-

“Notice of motion for 15.07.2016.

Till then, passing of final order by the learned Court below shall remain stayed.”

The proceedings have been stayed ever since.

14. The learned counsel for the petitioner has effectively raised three contentions. He contends that a bare reading of the FIR and the evidence of Tarbalbir Singh clearly establishes the *prima facie* culpability of the private respondents. At the stage of adjudication of an application under Section 319 Cr.P.C., the appreciation of evidence cannot take place and therefore, if a *prima facie* case was made out and the evidence available on record was slightly more than that which is sufficient to frame charges then the respondents have to be summoned.

As per him, in the present case, there was more than sufficient evidence

available which would establish the *prima facie* culpability of the private respondents. It is thus his case that the test applied by both the Courts that the evidence was insufficient to ensure conviction was the wrong test. Reliance is placed on the judgments of Hon'ble Supreme in the case of *Hardeep Singh Versus State of Punjab & others, 2014(1) R.C.R. (Criminal) 623*, *Sartaj Singh Versus State of Haryana & another, 2021(2) R.C.R. (Criminal) 527*, *Manjeet Singh Versus State of Haryana & others, 2021 SCC OnLine 632*, *Sagar Versus State of U.P. & another etc. 2022(2) R.C.R. (Criminal) 344* and *Sukhpal Singh Khaira Versus The State of Punjab, 2023(1) SCC 289*.

15. On the other hand, the learned counsel for the respondent Nos.2 to 4 contends that a bare reading of the FIR reveals no offence whatsoever. The statement of the petitioner/complainant while deposing in Court was an improvement and therefore cannot be relied upon to summon the accused. In fact, the entire family of the main accused Ashwani Sharma had been implicated. The respondents were not a party to the partnership deed and after a detailed inquiry, the Investigating Agency had come to the conclusion that the answering respondents were innocent. He thus, contends that the impugned judgments had rightly been passed and no case for summoning of the private respondents was made out.

16. The learned State counsel contends that there was sufficient evidence to summon the private respondents to face Trial along with the other accused.

17. I have heard the learned counsel for the parties at length.

18. Before proceeding further in the matter, it would be apposite to refer to the provisions of Section 319 Cr.P.C.

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 offence upon which the inquiry or trial was commenced.”

19. The Hon'ble Supreme Court in the case of **Hardeep Singh Versus State of Punjab & others, 2014(1) R.C.R. (Criminal) 623**, held as under:-

“5. On the consideration of the submissions raised and in view of what has been noted above, the following questions are to be answered by this Bench :

(i) What is the stage at which power under Section 319 Cr.P.C. can be exercised?

(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?

(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?

(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 convicted?

(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 charged or who have been discharged?

*** *** ***

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.

In **Sartaj Singh Versus State of Haryana & another,**
2021(2) R.C.R. (Criminal) 527, it held as under:-

“6.2 Considering the law laid down by this Court in Hardeep Singh (supra) and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under section 319 CrPC, 1973 even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) 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 CrPC, 1973 provided from the evidence (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial.

6.3 In S. Mohammed Ispahani v. Yogendra Chandak (2017) 16 SCC 226, this Court has observed and held as under: (SCC p. 243)

"35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not

named in the charge-sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet. Once that stage has gone, the Court is still not powerless by virtue of section 319 CrPC, 1973. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused."

6.4 In the case of Rajesh v. State of Haryana (2019) 6 SCC 368, after considering the observations made by this Court in Hardeep Singh (supra) referred to hereinabove, this Court has further observed and held that 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, 1973 and even those persons named in FIR but not implicated in chargesheet can be summoned to face the trial provided during the trial some evidence surfaces against the proposed accused.

7. Applying the law laid down by this Court in the aforesaid decisions to the case of the accused on hand, we are of the opinion learned Trial Court was justified in summoning the private respondents herein to face the trial as accused on the basis of the deposition of the appellant - injured eye witness. As held by this Court in the aforesaid decisions, the accused can be summoned on the basis of even examination-in-chief of the witness and the Court need not wait till his cross-examination. If on the basis of the examination-in-chief of the witness the Court is satisfied that there is a prima facie case against the proposed accused, the Court may

in exercise of powers under section 319 CrPC, 1973 array such a person as accused and summon him to face the trial. At this stage, it is required to be noted that right from the beginning the appellant herein - injured eye witness, who was the first informant, disclosed the names of private respondents herein and specifically named them in the FIR. But on the basis of some enquiry by the DSP they were not charge-sheeted. What will be the evidentiary value of the enquiry report submitted by the DSP is another question. It is not that the investigating officer did not find the case against the private respondents herein and therefore they were not chargesheeted. In any case, in the examination-in-chief of the appellant-injured eye witness, the names of the private respondents herein are disclosed. It might be that whatever is stated in the examination-in-chief is the same which was stated in the FIR. The same is bound to be there and ultimately the appellant herein - injured eye witness is the first informant and he is bound to again state what was stated in the FIR, otherwise he would be accused of contradictions in the FIR and the statement before the Court. Therefore, as such, the learned Trial Court was justified in directing to issue summons against the private respondents herein to face the trial.

8. Now, so far as the impugned judgment and order passed by the High Court is concerned, it appears that while quashing and setting aside the order passed by the learned Trial Court, the High Court has considered/observed as under:

"No evidence except the statement of Sartaj Singh, which has already been investigated into by the concerned DSPs was relied upon by the trial Court to summon, which was not sufficient for exercising power under Section 319 Cr.P.C., 1973.

As per statement of Sartaj Singh, Palwinder Singh and Satkar Singh gave him lathi blows on the head. Manjeet Singh, Amarjeet Singh, Rajwant Singh, Narvair Singh and Sukhdev Singh were holding gandasi. Manjeet Singh, Amarjeet Singha and Rajwant Singh gave him gandasi blows on the head and face. All the injuries are stated to fall in the offence under Sections 323, 324, 326, 341 read with Section 149 IPC. In case, so many people as mentioned above were giving gandasi and lathies blows on the head, Sartaj Singh was bound to have suffered more injuries, which would not have left him alive and probably he would have been killed on the spot. He seems to have escaped with only such injuries as have invited offence only under Sections 323, 324, 326, 341 read with Section 149 of IPC. Therefore, the trial Court erred in exercising his jurisdiction summoning the other accused where exaggeration and implication is evident on both sides."

8.1 The aforesaid reasons assigned by the High Court are unsustainable in law and on facts. At this stage, the High Court was not required to appreciate the deposition of the injured eye witness and what was required to be considered at this stage was whether there is any prima facie case and not whether on the basis of such material the proposed accused is likely to be convicted or not and/or whatever is stated by the injured eye witness in his examination-in-chief is exaggeration or not. The aforesaid aspects are required to be considered during the trial and while appreciating the entire evidence on record. Therefore, the High Court has materially erred in quashing and setting aside the order passed by the learned Trial Court summoning the accused to face the trial in exercise of powers under

section 319 CrPC, 1973 on the reasoning mentioned hereinabove. Even the observations made by the High Court referred to hereinabove are on probability. Therefore, the impugned judgment and order passed by the High Court is not sustainable in law and on facts and is beyond the scope and ambit of section 319 CrPC, 1973.

8.2 In view of the above and for the reasons stated that, the present appeals succeed. The impugned judgment and order passed by the High Court dated 28.08.2020 in revision application bearing CRR No. 3238 of 2018 and CRMM No. 55631 of 2018 is hereby quashed and set aside and the order passed by the learned Trial Court summoning the private respondents herein to face the trial is hereby restored. The private respondents herein now to face the trial as summoned by the learned Trial Court. The present appeals are allowed accordingly.

(emphasis supplied)

In Manjeet Singh Versus State of Haryana & others, 2021

SCC OnLine 632, it held as under:-

“34.The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under section 319 CrPC, 1973 can be summarized as under:

- (i) That while exercising the powers under section 319 CrPC, 1973 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, 1973 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, 1973 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, 1973 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 pretrial stage intended to put the process into motion;

(x) the court can exercise the power under section 319 CrPC, 1973 only after the trial proceeds and commences with the recording of the evidence;

(xi) the word "evidence" in section 319 CrPC, 1973 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, 1973 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, 1973 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, 1973 can be exercised;

(xv) that power under section 319 CrPC, 1973 can be exercised even at the stage of completion of examination-in-chief and the court need not 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, 1973 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, 1973 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.

35. Applying the law laid down in the aforesaid decisions to the facts of the case on hand we are of the opinion that the Learned trial Court as well as the High Court have materially erred in dismissing the application under

section 319 CrPC, and refusing to summon the private respondents herein to face the trial in exercising the powers under section 319 CrPC. It is required to be noted that in the FIR No.477 all the private respondents herein who are sought to be arraigned as additional accused were specifically named with specific role attributed to them. It is specifically mentioned that while they were returning back, Mahendra XUV bearing no. HR-40A-4352 was standing on the road which belongs to Sartaj Singh and Sukhpal. Tejpal, Parab Saran Singh, Preet Samrat and Sartaj were standing. Parab Sharan was having lathi in his hand, Tejpal was having a gandsi, Sukhpal was having a danda, Sartaj was having a revolver and Preet Singh was sitting in the jeep. It is specifically mentioned in the FIR that all the aforesaid persons with common intention parked the Mahendra XUV HR-40A-4352 in a manner which blocks the entire road and they were armed with the weapons. Despite the above specific allegations, when the charge-sheet/final report came to be filed only two persons came to be charge-sheeted and the private respondents herein though named in the FIR were put/kept in column no.2. It is the case on behalf of the private respondents herein that four different DSPs inquired into the matter and thereafter when no evidence was found against them the private respondents herein were put in column no.2 and therefore the same is to be given much weightage rather than considering/believing the examination-in-chief of the appellant herein. Heavy reliance is placed on the case of Brijendra Singh (Supra). However none of DSPs and/or their reports, if any, are part of the charge-sheet. None of the DSPs are shown as witnesses. None of the DSPs are Investigating Officer. Even on considering the final report/charge-sheet as a whole there does not appear to be any consideration on the specific allegations qua the accused the private respondents herein who are kept in column no.2. Entire discussion in the charge-sheet/final

report is against Sartaj Singh only.

36. So far as the private respondents are concerned only thing which is stated is "During the investigation of the present case, Shri Baljinder Singh, HPS, DSP Assandh and Shri Kushalpal, HPS, DSP Indri found accused Tejpal Singh, Sukhpal Singh, sons of Gurdev Singh, Parab Sharan Singh and Preet Samrat Singh sons of Mohan Sarup Singh caste Jat Sikh, residents of Bandrala innocent and accordingly Sections 148, 149 and 341 of the IPC were deleted in the case and they were kept in column no.2, whereas challan against accused Sartaj has been presented in the Court." .

37. Now thereafter when in the examination-in-chief the appellant herein-victim-injured eye witness has specifically named the private respondents herein with specific role attributed to them, the Learned trial Court as well as the High Court ought to have summoned the private respondents herein to face the trial. At this stage it is required to be noted that so far as the appellant herein is concerned he is an injured eye-witness. As observed by this Court in the cases of State of MP v. Mansingh (2003) 10 SCC 414 (para 9); Abdul Sayeed v. State of MP (2010) 10 SCC 259; State of Uttar Pradesh v. Naresh (2011) 4 SCC 324, the evidence of an injured eye witness has greater evidential value and unless compelling reasons exist, their statements are not to be discarded lightly. As observed hereinabove while exercising the powers under section 319 CrPC the Court has not to wait till the cross-examination and on the basis of the examination-in-chief of a witness if a case is made out, a person can be summoned to face the trial under section 319 CrPC.

38. Now so far as the reasoning given by the High Court while dismissing the revision application and confirming the order passed by the Learned trial Court dismissing the application under section 319 CrPC is concerned, the High Court itself has observed that PW1 Manjeet Singh is the

injured witness and therefore his presence cannot be doubted as he has received fire arm injuries along with the deceased. However, thereafter the High Court has observed that the statement of Manjeet Singh indicates over implication and that no injury has been attributed to either of the respondents except they were armed with weapons and the concerned injuries are attributed only to Sartaj Singh even for the sake of arguments someone was present with Sartaj Singh it cannot be said that they had any common intention or there was meeting of mind or knew that Sartaj would be firing. The aforesaid reasonings are not sustainable at all. At the stage of exercising the powers under section 319 CrPC the Court is not required to appreciate and/or enter on the merits of the allegations of the case. The High Court has lost sight of the fact that the allegations against all the accused persons right from the very beginning were for the offences under Sections 302, 307, 341, 148 & 149 IPC. The High Court has failed to appreciate the fact that for attracting the offence under Section 149 IPC only forming part of unlawful assembly is sufficient and the individual role and/or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to either of the respondents except that they were armed with weapons and therefore, they cannot be added as accused is unsustainable. The Learned trial Court and the High Court have failed to exercise the jurisdiction and/or powers while exercising the powers under section 319 CrPC.

39. Now so far as the submission on behalf of the private respondents that though a common judgment and order was passed by the High Court in CRR No.3238 of 2018 at that stage the appellant herein did not prefer appeal against the impugned judgment and order passed by the High Court in CRR No.28 of 2018 and therefore this Court may not exercise the powers under Section Article 136 is concerned the aforesaid has no substance. Once it is found that the

Learned trial Court as well as the High Court ought to have summoned the private respondents herein as additional accused, belated filing of the appeal or not filing the appeal at a relevant time when this Court considered the very judgment and order but in CRR No.3238 of 2018 cannot be a ground not to direct to summons the private respondents herein when this Court has found that a prima facie case is made out against the private respondents herein and they are to be summoned to face the trial.

40. Now so far as the submission on behalf of the private respondents that though in the charge-sheet the private respondents herein were put in column no.2 at that stage the complainant side did not file any protest application is concerned, the same has been specifically dealt with by this Court in the case of Rajesh (Supra). This Court in the aforesaid decision has specifically observed that 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 as who were named in the 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, 1973.

41. Similarly, the submission on behalf of the private respondents herein that after the impugned judgment and order passed by the High Court there is a much progress in the trial and therefore at this stage power under section 319 CrPC, 1973 may not be exercised is concerned, the aforesaid has no substance and cannot be accepted. As per the settled preposition of law and as observed by this Court in the case of Hardeep Singh (Supra), the powers under section 319 CrPC, 1973 can be exercised at any stage before the final conclusion of the trial. Even otherwise it is required to be noted that at the time when the application under section 319 CrPC, 1973 was given only one witness was examined and examination-in-chief of PW1 was recorded and while the cross-examination of PW1 was going

on, application under section 319 CrPC, 1973 was given which came to be rejected by the Learned trial Court. The Order passed by the Learned trial Court is held to be unsustainable. If the Learned trial Court would have summoned the private respondents herein at that stage such a situation would not have arisen. Be that as it may as observed herein powers under section 319 CrPC, 1973 can be exercised at any stage from commencing of the trial and recording of evidence/deposition and before the conclusion of the trial at any stage.

42. In view of the above and for the reasons stated above the impugned judgment and order passed by the High Court and that of the Learned trial Court dismissing the application under section 319 CrPC submitted on behalf of the complainant to summon the private respondents herein as additional accused are unsustainable and deserve to be quashed and set aside and are accordingly quashed and set aside. Consequently the application submitted on behalf of the complainant to summon the private respondents herein is hereby allowed and the Learned trial Court is directed to summon the private respondents herein to face the trial arising out of FIR No.477 dated 27.07.2016 in Sessions Case No.362 of 2016 for the offences punishable under Sections 302, 307, 341, 148 & 149 IPC. However, it is specifically observed that the observations made hereinabove are only prima facie for the purpose of exercising the powers under section 319 CrPC and the Learned trial Court to decide and dispose of the trial in accordance with the law and on its own merits and on the basis of the evidence to be laid before it.”

(emphasis supplied)

In Sagar Versus State of U.P. & another etc. 2022(2)

R.C.R. (Criminal) 344, held 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 noticed 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 un rebutted, would lead to conviction. The learned Single Judge of the High Court has even failed to consider the basic principles laid down by this Court while invoking [Section 319](#) of the Code, which has been considered by the learned trial Judge under its order dated 30 th January, 2018.”

(emphasis supplied)

In **Sukhpal Singh Khaira Versus The State of Punjab,**

2023(1) SCC 289, held as under:-

“32.We have also kept in view the point by point analysis of the object and power to be exercised under [Section 319](#) of CrPC, as has been indicated in para 34 of [Manjit Singh vs. State of Haryana and Others](#) (2021) SCC Online SC 632.”

(emphasis supplied)

20. A reading of the aforementioned judgments would show that firstly, the crucial test to be applied for the purposes of summoning of a prospective accused is that there must be more than a *prima facie* case as exercised at the time of framing of charge but short of satisfaction to an extent that the evidence, if it goes un rebutted would lead to conviction. This is on account of the fact that charges already stand framed against the accused facing Trial and therefore, the standard of proof for the purposes of summoning of an accused who had been initially exonerated ought to be slightly higher. However, clearly, there is no requirement that

the evidence available on the file must be such that would reasonably lead to conviction.

Secondly, the Court while exercising powers under Section 319 Cr.P.C. is not required or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the course of Trial.

21. Applying the aforementioned principles to the present case, it would be seen that firstly, the test applied by both the Courts below is that the evidence was insufficient to lead to conviction. Secondly, the Courts have come to the conclusion that the accused sought to be summoned had been falsely implicated as they were family members of Ashwani Sharma, a charge-sheeted accused and had also not signed the partnership agreement. The Courts also came to the conclusion that the evidence was insufficient to summon them. Effectively, the Courts have stepped into the domain of appreciation of evidence which could not have been done at this stage.

22. In view of the aforementioned discussion, I find merit in the present petition and therefore, the order dated 20.01.2016 (Annexure P-5) passed by the Judicial Magistrate, 1st Class, Amritsar, order dated 26.02.2016 (Annexure P-7) passed by the Additional Sessions Judge, Amritsar and all subsequent proceedings arising therefrom are hereby quashed.

23. The case is remanded back to the Court of the Magistrate who shall pass a fresh order on the application under Section 319 Cr.P.C. within a period of 04 weeks from the date of receipt of a copy of this order.

24. However, it is made clear that this Court has expressed absolutely no opinion on the merits of the case. The discussion hereinabove was only for the purposes of deciding the present petition and the Courts are free to adjudicate afresh in accordance with law keeping in view the principles as enunciated by the Hon'ble Supreme Court and referred to hereinabove.

(JASJIT SINGH BEDI)
JUDGE

10.02.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No