

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

CRR-612-2023 (O&M)

Date of Decision: *March 03, 2022*

Ketan Sharma

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. D.V. Dhindsa, Advocate,
for the petitioner.

Vivek Puri, J.

CRM-10567-2023

This is an application for condonation of delay of
4 days in the filing the revision petition.

For the reasons mentioned in the application, the
application for delay in filing the revision petition is
condoned.

Application stands disposed of.

CRR-612-2023

The petitioner has assailed the order dated
23.11.2022 passed by the Court of learned Additional
Sessions Judge, Ambala, vide which the application under

Section 319 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') filed by the petitioner for summoning of respondents no. 2 to 4, has been dismissed.

Briefly, as per the allegations of the prosecution, the FIR has been registered on the basis of the statement of the petitioner alleging that sometime ago, the respondent no.4 had borrowed money from the father of the petitioner and given a cheque as security. The father of the petitioner had instituted a case against the respondent no.4 in the Court at Ambala for not returning the money and the case was fixed for hearing on 17.01.2019. On that day, the petitioner along with his parents were returning back to their house after attending the date of hearing in the Court in the car bearing registration no. HR-06V-2685 being driven by his father. At about 5.30 p.m., Sher Pal and Prince @ Kala came from behind on a scooty, stopped the car, dragged out the father of the petitioner from the car and inflicted injuries by means of gandasi. Sher Pal inflicted gandasi blow on the forehead and Prince @ Kala inflicted gandasi blow on the back side of head of the father of the petitioner. The petitioner and his mother raised alarm which attracted his grandfather Jai Parkash. Meanwhile, Prince and Sher Pal slipped away along with their weapons. The injured was shifted to CHC Mullana and thereafter, referred to MMU Hospital, Mullana.

During the course of trial, an application under Section 319 of the Code was moved for summoning the respondents no. 2 to 4 to face trial in the case. The application has been dismissed in terms of the impugned order and the same has been assailed by way of present revision petition.

Learned counsel for the petitioner contends that Prince and Sher Pal are facing trial. During the course of trial, the statements of the complainant and the injured have been recorded. They have been attributed sufficient allegations against the respondents no.2 to 4. Furthermore, the injured had sustained 10 injuries on his person and sufficient grounds are made out to proceed against the respondents no.2 to 4.

Section 319 of the Code confers power on the trial Court to find out as to whether a person ought to have been committed as an accused has erroneously been omitted or has been deliberately excluded by the investigating agency and satisfaction has to be arrived at on the basis of the evidence so adduced during the course of trial. The power under Section 319 of the Code is discretionary and such discretion has to be exercised judiciously having regard to the facts and circumstances of the case. The power is extraordinary and is to be used sparingly and only if compelling circumstances exists.

The provisions of Section 319 of the Code empowers the Court to proceed against any person not shown or mentioned as accused, if it appears from the evidence that such person has also committed an offence for which he could be tried together with the main accused. The object of Section 319 of the Code is to ensure that no one who appears to be guilty escapes the trial. The power exercisable under this Section is an extra ordinary power conferred on the Court to advance real and substantial justice. It is required to be used with care, caution, circumspection and only if compelling reasons exist for proceeding against a person against whom no action has been initiated. Furthermore, there must be strong and cogent evidence indicating the involvement of those persons in the commission of crime.

The Constitution Bench of the Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others, (2014) 3 SCC 92**, has observed as following:-

“105. Power under Section 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 led 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 led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused.”

In *Ramesh Chandra Srivastava Vs. State of U.P. & another, 2021(4) RCR (Crl.) 219 (Supreme Court),*

it has been held as following:-

“The test as laid down by the Constitution Bench of this Court for invoking power under Section 319 Cr.P.C. inter alia includes the principle that only when strong and cogent evidence occurs

against a person from the evidence the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than prima facie case which is applied at the time of framing of charges.”

Furthermore, in **Sagar Vs. State of U.P. and another, 2022(2) RCR (Crl.) 344 (Supreme Court)** it has been observed as following:-

“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 unrebutted, would lead to conviction.”

On advertng to the merits of the present case, the first version of the case has been unfolded in the statement of the petitioner on the basis whereof the FIR has been registered. Significantly, the name of the respondents no.2 to 4 has not been specified therein. Even no role has been attributed to them in the commission of crime. Although in the statement of Sant Ram injured recorded during the course of investigation, the name of respondents no.2 to 4

have been specified and the allegations are to the effect that the respondent no.4 had exhorted and the respondents no. 2 and 3 who were armed with gandasi had inflicted gandasi blows upon him but significantly, the said statement has been recorded on 30.01.2019 i.e. after a period of two weeks from the date of registration of the FIR. In the event, the petitioner was an eye witness to the occurrence and remained with the injured till he was taken to the hospital, no reason is made out as to why he would have omitted or skipped to get the names of respondents no. 2 to 4 recorded in his statement and give the details of the role assigned to them. Even while appearing in the witness box, the petitioner has deposed to the effect that he saw respondents no. 2 to 4 armed with gandasi while entering into sugarcane fields from the spot. He has not assigned any specific role to any of the respondents no.2 to 4. Significantly, there is no whisper of allegations sought to be attributed to the respondents no.2 to 4 in the FIR. The statement of the injured has been recorded after a period of two weeks from date of registration of the FIR.

In these set of circumstances, in the instant case, it cannot be said that the case as sought to be put forth against the proposed accused is more than a prima facie which is to be applied at the time of framing of charges.

Rather, it appears that the version against them is a result of afterthought.

For the aforesaid reasons, no illegality or irregularity is made out in the impugned order, which may warrant interference by this Court.

Instant petition is dismissed accordingly.

March 03, 2022
vk

(Vivek Puri)
Judge

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes