

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-11021-2023
Date of Decision: 01.12.2023

SIMARJIT KAUR AND ANR. -Petitioners

Versus

STATE OF PUNJAB AND ANR. -Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Balbir Kumar Saini, Advocate
for the petitioners.

Mr. P.S. Grewal, D.A.G., Punjab.

Mr. Munish Gulati, Advocate
for the respondent No.2/complainant.

KULDEEP TIWARI, J.

1. Through the instant petition, the petitioners have assailed the impugned summoning order dated 14.10.2022, wherethrough, the learned Magistrate concerned has, after allowing the application under Section 319 of the Cr.P.C., as preferred by the respondent No.2/complainant, summoned the petitioners as additional accused to face trial along with other accused, in FIR No.27 dated 28.04.2021, under Sections 323/324/34 of the IPC, registered at P.S. Ajitwal, District Moga. In addition, the petitioners have also challenged the verdict dated 03.02.2023, whereby, the learned revisional court concerned has dismissed the statutory revision petition, as preferred before it by the petitioners, against the impugned summoning order dated 14.10.2022.

2. The learned counsel for the petitioners has challenged the

orders (supra), primarily on the ground that, the impugned summoning proceedings are tainted with a fundamental legal defect, as despite there being absolutely no case made out against the petitioners, based upon the evidence, as adduced before the learned trial Court concerned, yet they have erroneously been summoned to face trial. In fact, the application, as moved under Section 319 of the Cr.P.C, was nothing but a sheer abuse of the process of law.

FACTUAL MATRIX

3. The genesis of the prosecution case is embodied in the statement made by respondent No.2/complainant- Makhan Singh, alleging therein that, one Tehal Singh along with his son and daughters (present petitioners) made assault upon him. The relevant extract of his statement, as encapsulated in the Final Report (Annexure P-4), is extracted hereinafter:-

“...On 26.04.2021, at about 07:15 a.m., I was going from my house towards my outer Warra. I was still in the street, then my neighbour Tehal Singh son of Dharam Singh, who was armed with spade, and, Dheera Singh, who was armed with Dang, were standing outside their house. On seeing me coming, both of them started abusing me, and, said that today will teach you a lesson for shifting the stones from our street. In the meantime, two daughters of Tehal Singh also came out of their house and started abusing me. Then Dhira Singh son of Tehal Singh caught hold me from my arms, whereupon, Tehal Singh gave a spade blow towards my head, which hit on my forehead, and, then his daughters caught hold my beard and started abusing me. Then Dhira Singh pushed me and also gave a Dang blow, which hit on my right knee. Upon this, I raised alarm “Maarta-Maarta” and people gathered there, which led to the above said persons running away from the spot along with their respective weapons. On hearing alarm, my uncle Wasakha Singh came at the spot and on seeing blood oozing out from my head, he arranged conveyance and got me admitted at the Civil Hospital, Dhudike, where I am under treatment. The motive behind the occurrence is

that they had put stones in the street, which were creating problem while passing from the street on motorcycle or tractor....”

4. The hereinabove extracted statement led to registration of the present FIR against co-accused Tehal Singh and Dheera Singh.

5. It would be worth to record here that, though allegations against the present petitioners were also levelled by the respondent No.2/complainant in his statement (supra), however, as is apparent from the “police proceedings” portion of the FIR (supra), the present petitioners were found innocent, rather a finding has been recorded therein that they have deliberately been entangled in the instant case.

6. Aggrieved by non arraying of the present petitioners as accused in the present FIR, the respondent No.2/complainant moved an application before the Senior Superintendent of Police, Moga, thereby seeking nomination of present petitioners as accused in the present FIR. Though this application was duly inquired into, however, again a conclusion *qua* innocence of the present petitioners was recorded by the S.H.O. concerned in his report (Annexure P-3). The relevant extract of report (Annexure P-3) is reproduced hereinafter:-

“15. Conclusion: In the initial investigation, Tehal Singh, Dhira Singh have been nominated in the above said case and his both daughters namely Simarjit Kaur and Karamveer Kaur are unmarried. Due to the party faction in the village, their names have been deliberately mentioned in the complaint by the complainant. They are not found involved in the above said case.....”

7. Therefore, after completion of investigation, since no complicity of the petitioners could surface, the Final Report under Section 173 of the Cr.P.C. was presented only against co-accused Tehal Singh and Randhir Singh @ Dhira before the learned trial Court, who have resultantly

been subjected to face trial, through framing of charges against them.

8. What caused grievance to the respondent No.2/complainant, was the petitioners becoming declared innocent by the investigating officer and consequently, he was driven to, through Public Prosecutor, institute an application under Section 319 of the Cr.P.C., thereby seeking summoning of the present petitioners as additional accused.

9. The learned trial Court concerned, through drawing the impugned order dated 14.10.2022, allowed the application (supra) and summoned the petitioners to face trial. The summoning of the petitioners was anchored upon the learned trial Court concerned gauging the ocular testimony of complainant/respondent No.2 to be sufficient for the relevant purpose.

10. Thereafter, though the impugned order (supra) was assailed by the petitioners through instituting a revision petition thereagainst before the learned Additional Sessions Judge, Moga, however, their efforts reaped no fruits, as the revision petition was dismissed by the latter vide verdict dated 03.02.2023.

11. Consequently, the petitioners, who are aggrieved from their summoning, are before this Court, through the instant petition.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

12. The learned counsel for the petitioners, in his assailing the impugned summoning order(s), has argued that despite the petitioners being declared innocent by the investigating officer, and, despite there being lack of any cogent evidence even remotely indicative of petitioners' complicity, yet the learned courts below have erred in summoning the petitioners, merely on a flimsy ground that, they had played active role in the alleged

occurrence.

13. The learned counsel for the petitioners has further argued that, apart from the initial police investigation, which led to the petitioners becoming exculpated in the FIR, the innocence of the petitioners also garners strength from the report (Annexure P-3), which was drawn after making investigation in the complaint made by the respondent No.2/complainant, and wherein, a specific conclusion has been recorded that the petitioners have deliberately been entangled in the alleged occurrence, owing to party faction in the village concerned.

14. Lastly, the learned counsel for the petitioners has argued that the impugned summoning order has been drawn in gross misinterpretation of the guidelines, as issued by the Hon'ble Supreme Court in the case of ***“Hardeep Singh Vs. State of Punjab and Others”, (2014) 1 RCR (Criminal) 623.***

SUBMISSIONS OF LEARNED STATE COUNSEL, AND, LEARNED COUNSEL FOR THE RESPONDENT NO.2/COMPLAINANT

15. *Per contra*, the learned State counsel, who is assisted by the learned counsel for the respondent No.2/complainant, has opposed the arguments made by the learned counsel for the petitioner. By placing heavy reliance upon the statement(s) of the complainant/respondent No.2, wherein names of the petitioners have been disclosed as assailants, he has justified the summoning of the petitioners, inasmuch as, the roles of the petitioners become unveiled in the said statement(s). Therefore, a prayer is made that the instant petition be dismissed, being devoid of merits.

ANALYSIS

16. Before embarking upon the process of evaluating the

contentions raised by the learned counsels for the contesting litigants, and thereupon, penning down any opinion upon the validity of the impugned summoning order(s), it is deemed imperative to first capture an overview of some significant legal propositions.

17. The scope of Section 319 of the Cr.P.C. has been considered and enunciated by the Hon'ble Supreme Court and by this Court also, in a catena of judgments, whereupon, it has been held that, during the pendency of inquiry or trial, the trial Court has jurisdiction to proceed against a person for the offence, which he appears to have committed, if, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that such person, not being the accused, has committed any offence, for which he could be tried together with the accused, under Section 319(1) of the Cr.P.C.

18. The Hon'ble Supreme Court in ***"Sohan Lal vs State of Rajasthan"***, AIR 1990 SC 2158, while explaining the scope of Section 319 of the Cr.P.C., has held that, this Section empowers the trial Court to proceed against a person, not being the accused, **"appearing to be guilty"** of an offence. The relevant extract of ***Sohan Lal's*** judgment is extracted hereinafter:-

"This section empowers the Court to proceed against persons not being the accused appearing to be guilty of offence. Sub-sections (1) and (2) of this section provide for a situation when a Court hearing a case against certain accused person finds from the evidence that some person or persons, other than the accused before it is or are also connected in this very offence or any connected offence; and it empowers the court to proceed against such person or persons for the offence which he or they appears or appear to have committed and issue process for the purpose. It provides that the cognizance against newly added accused is deemed to have been taken in the

same manner in which cognizance was first taken of the offence against the earlier accused. It naturally deals with a matter arising from the course of the proceeding already initiated. The scope of the section is wide enough to include cases instituted on private complaint.”

19. Moreover, in **Hardeep Singh’s case (supra)**, the Constitution Bench of the Hon’ble Supreme Court has, besides making consideration *qua* the degree of satisfaction required to invoke the provisions of Section 319 of the Cr.P.C. to arraign an accused, also rendered an answer thereto. The relevant extract of this judgment is reproduced hereinafter:-

“85. Thus, in view of the above, we hold that power under Section 319 Cr.P.C. can be exercised at the stage of completion of examination in chief and court does not need to wait till the said evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.

Q. (iv) What is the degree of satisfaction required for invoking the power under Section 319 Cr.P.C.?

86. Section 319(1) Cr.P.C. empowers the court to proceed against other persons who appear to be guilty of offence, though not an accused before the court.

The word "appear" means "clear to the comprehension", or a phrase near to, if not synonymous with "proved". It imparts a lesser degree of probability than proof.

87. In Pyare Lal Bhargava v. The State of Rajasthan, AIR 1963 Supreme Court 1094, a four-Judge Bench of this Court was concerned with the meaning of the word ‘appear’. The court held that the appropriate meaning of the word ‘appears’ is ‘seems’. It imports a lesser degree of probability than proof. In Ram Singh & Ors. v. Ram Niwas & Anr., 2009(3) RCR (Criminal) 501 : 2009(4) Recent Apex Judgments (R.A.J.) 261 : (2009)14 SCC 25, a two-Judge Bench of this Court was again required to examine the importance of the word ‘appear’ as appearing in the Section. The Court held that for the fulfillment of the condition that it appears to

the court that a person had committed an offence, the court must satisfy itself about the existence of an exceptional circumstance enabling it to exercise an extraordinary jurisdiction. What is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to conviction of the persons sought to be added as an accused in the case.

88. *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 Cr.P.C., 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, 2013(4) RCR (Criminal) 948 : 2013(6) Recent Apex Judgments (R.A.J.) 356 : 2013(11) SCALE 23, 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.*

89. *In Rajendra Singh (Supra), the Court observed :*

"Be it noted, the court need not be satisfied that he has committed an offence. It need only appear to it that he has committed an offence. In other words, from the evidence it need only appear to it that someone else has committed an offence, to exercise jurisdiction under Section 319 of the Code. Even then, it has a discretion not to proceed, since the expression used is "may" and not "shall". The legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction under this section. The expression "appears" indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under Section 319 of the Code or not."

90. *In Mohd. Shafi (Supra), this Court held that it is evident that before a court exercises its discretionary jurisdiction in terms of Section 319 Cr.P.C., it must arrive at a satisfaction that there exists a possibility that the accused so summoned in all likelihood would be*

convicted.

91. In Sarabjit Singh & Anr. v. State of Punjab & Anr., 2009(3) RCR (Criminal) 388 : 2009(4) Recent Apex Judgments (R.A.J.) 144 , while explaining the scope of Section 319 Cr.P.C., a two-Judge Bench of this Court observed :

"....For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.....Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. While framing charge in terms of Section 227 of the Code, the court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction. Whether a higher standard be set up for the purpose of invoking the jurisdiction under Section 319 of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof viz. (i) an extraordinary case, and (ii) a case for sparingly (sic sparing) exercise of jurisdiction, would not be satisfied." (Emphasis added)

92. In Brindaban Das & Ors. v. State of West Bengal, 2009(1) RCR (Criminal) 672 : 2009(1) Recent Apex Judgments (R.A.J.) 400 , a two-Judge Bench of this Court took a similar view observing that the court is required to consider whether such evidence would be sufficient to convict the person being summoned. Since issuance of summons under Section 319 Cr.P.C. entails a de novo trial and a large number of witnesses may have been examined and their re-examination could prejudice the prosecution and delay the trial, the trial court has to exercise such discretion with great care and perspicacity. A similar view has been re-iterated by this Court in Michael Machado & Anr. v. Central Bureau of Investigation & Ors., 2000(2) RCR (Criminal) 75 .

93. However, there is a series of cases wherein this Court while

dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 Cr.P.C., has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The Court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further. (Vide: State of Karnataka v. L. Munishwamy & Ors., AIR 1977 Supreme Court 1489; All India Bank Officers' Confederation etc. v. Union of India & Ors., AIR 1989 Supreme Court 2045; Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715; State of M.P. v. Dr. Krishna Chandra Saksena, 1997(1) RCR (Criminal) 556 : (1996) 11 SCC 439; and State of M.P. v. Mohan Lal Soni, 2000(3) RCR (Criminal) 452).

94. In Dilawar Babu Kurane v. State of Maharashtra, 2002(1) RCR (Criminal) 451, this Court while dealing with the provisions of Sections 227 and 228 Cr.P.C., placed a very heavy reliance on the earlier judgment of this Court in Union of India v. Prafulla Kumar Samal & Anr., AIR 1979 Supreme Court 366 and held that while considering the question of framing the charges, the court may weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out and whether the materials placed before this Court disclose grave suspicion against the accused which has not been properly explained. In such an eventuality, the court is justified in framing the charges and proceeding with the trial. The court has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but court should not make a roving enquiry into the pros and cons of the matter and weigh evidence as if it is conducting a trial.

95. In Suresh v. State of Maharashtra, 2001(2) RCR (Criminal) 278, this Court after taking note of the earlier judgments in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, 1991(1)

RCR (Criminal) 89 and State of Maharashtra v. Priya Sharan Maharaj, 1997(2) RCR (Criminal) 634, held as under :

"9.....at the stage of Sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction."
(Emphasis supplied)

96. Similarly in State of Bihar v. Ramesh Singh, AIR 1977 Supreme Court 2018, while dealing with the issue, this Court held :

".....If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial....."

97. In Palanisamy Gounder & Anr. v. State, represented by Inspector of Police, 2006(2) RCR (Criminal) 235 : (2005) 12 SCC 327, this Court deprecated the practice of invoking the power under Section 319 Cr.P.C. just to conduct a fishing inquiry, as in that case, the trial court exercised that power just to find out the real truth, though there was no valid ground to proceed against the person summoned by the court.

98. Power under Section 319 Cr.P.C. is a discretionary and an extra- ordinary 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.

99. 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.

20. The hereinabove discussed legal propositions elucidate that much stronger evidence, rather than mere probability of complicity and mere existence of *prima facie* case, is required to proceed against any person, under Section 319 of the Cr.P.C. It is now the settled proposition of law that, mere suspicion cannot constitute the bedrock for summoning of a person, in exercise of powers conferred by Section 319 of the Cr.P.C., rather exercise of this provision must be anchored upon existence of cogent evidence and not in a casual or cavalier manner. 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.

REASONS FOR ALLOWING THE INSTANT PETITION

21. The prime reason for allowing the instant petition is grooved in the factum that both the learned courts below have failed to appreciate that the entire record is lacking any cogent evidence suggestive of petitioners' culpability.

22. In the instant case, there is no wrangle that the respondent No.2/complainant had, at the very first instance, i.e. in the FIR, alleged the petitioners to have abused him, and, to have caught hold his beard. However, subsequently when the petitioners were not arrayed as accused in the FIR, owing to them being found innocent, the respondent No.2/complainant moved an application before the Senior Superintendent of Police, Moga, thereby seeking nomination of present petitioners as accused in the FIR, on the improved allegations that, apart from catching hold his beard and abusing him, the petitioners had also inflicted injuries to him with their respective weapons. Strangely enough, the trail of improvements, on the part of the respondent No.2/complainant did not pause here, as, at the time of making testification as PW-1 before the learned trial Court concerned, he chose to adopt and reiterate his initial version as spelt in the FIR, i.e. though he alleged the petitioners to have abused him, and, to have pulled his beard, however, he omitted the allegations *qua* infliction of injuries to him by the petitioners with their respective weapons. The relevant extract of all the three versions (*supra*), as narrated by the respondent No.2/complainant, is reproduced hereinafter:-

“VERSION IN FIR

....two daughters of Tehal Singh also came out of their house and started abusing me....., and, then his daughters caught hold my beard and started abusing me....

VERSION IN COMPLAINT

....both daughters of Tehal Singh namely Simarjit Kaur and

Karamveer Kaur, inflicted injuries to me with their respective weapons in connivance with each other. The above mentioned daughters of the accused caught hold my beard and abused me.....

VERSION AS PW-1

....at that time two daughters of Tehal Singh also came there and caught hold of me, pulled my beard.....”

23. Therefore, since the respondent No.2/complainant has made evident material improvements in his statements (supra), which had formed the backbone for summoning of the petitioners, despite them being declared innocent, resultantly, the summoning of the petitioners, on such weak piece of ocular testimony, does not pass the test, as laid down in **Hardeep Singh's case (supra)**. There has to 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 goes un rebutted, would lead to conviction.

24. Moreover, neither the learned courts below have framed any opinion, nor made any conclusion as to whether there is any material to support the contradictory ocular testification of the respondent No.2/complainant, which though has become heavily depended upon, however is the sole and weak piece of evidence before it, at the stage of passing the impugned summoning order.

25. To the considered mind of this Court, when the ocular testimony of the respondent No.2/complainant is not sufficient enough for summoning of the petitioners, the learned courts below should have refrained from exercising power under Section 319 Cr.P.C.

FINAL ORDER

26. For all the reasons (supra), this Court finds merit in the instant petition and is constrained to allow the same. Consequently, the instant

petition is **allowed**, and, the impugned summoning order dated 14.10.2022, and, the verdict dated 03.02.2023, are set aside.

27. Needless to say that, the complainant/prosecution agency shall be at liberty to, at a subsequent stage, invoke the provisions of Section 319 of the Cr.P.C., in case there emerges cogent and convincing evidence warranting summoning of the petitioners to face trial.

(KULDEEP TIWARI)
JUDGE

01.12.2023
devinder

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