

108 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-683-2023 (O&M)
Date of Decision:26.07.2023

Ramesh Chander

...Petitioner

Vs.

State of Haryana and Others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Kshitij Bharati, Advocate
for the petitioner.

Mr. Rajinder Kumar Banku, Deputy Advocate General, Haryana.

N.S.Shekhawat J.

CRM-14880-2023

1. Prayer in the application filed under Section 482 Cr.P.C. is for placing on record the Annexure P-5 and Annexure P-6.

2. For the reasons mentioned in the application, the same is allowed, subject to just all exceptions. Annexures P-5 and P-6 are taken on record.

Main case

1. The petitioner has filed the present revision petition against the impugned order dated 13.02.2023, passed by the Court of Additional Sessions Judge, Gurugram, whereby the application under Section 319 Cr.P.C filed by the present petitioner was ordered to be dismissed.

2. The FIR in the present case was registered on the basis of the statement made by Ramesh Chander son of Ram Singh, who alleged that on 06.06.2020, he was coming back with his wife from his fields on his motorcycle. At about 08:00 AM, when he reached in front of Pandit's dairy, a

Wagon R car came from the side of the village and had hit their motorcycle, due to which both of them had fallen down. Five persons namely Rahul son of Suresh, Vishal son of Ashok, Pradeep son of Shri Krishan and two more persons alighted from the car and they had forcibly put his wife in the car, after which he got up and stood in the front of the car and blocked its way. The accused started beating the petitioner with sticks and rod and Rahul had hit him with Farsi on his right foot due to which the toe finger was cut. Vishal caused an injury with an sword on his right hand. Pradeep and rest of the assailants also had beaten him up brutally with the lathis and rods and his wife Sanju came in between them to save him. Many persons were present in the fields and in the meantime, Rahul took out one country made pistol and fired a shot with the intention to kill him, but luckily the fire shot missed him and while they were running away, Rahul and his accomplices had threatened to kill the complainant. Rahul even snatched gold chain from the neck of his wife Sanju Devi. His father Ram Singh was also coming from the side of the village and all the accused sat in their vehicle and ran away from the spot. Suresh and his wife Kamlesh had conspired with their sons Pankaj and Rahul to beat him up as they wanted to eliminate his family, so that they might grab the property. With these broad allegations, the FIR in the present case was got registered by the complainant.

3. Learned counsel for the petitioner contends that in the present case, the FIR was registered on 07.06.2020 under Sections 147, 148, 307, 323, 325, 365, 379-B, 506 of IPC and under Section 25 of the Arms Act against the respondents and the other accused. After getting the injured admitted in the hospital, FIR was registered on the next day. During the course of investigation,

Rahul and Pinku sons of Suresh, Pradeep Kumar son of Shri Krishan, Sandeep son of Kuldeep were arrested.

4. During the course of investigation, the police challaned Rahul, Pardeep Kumar, Sandeep @ Bacha, Ravi @Vicky and the final report was presented before the competent Court. During the course of trial, statement of PW-1 Ramesh Chander was recorded and the prosecution moved an application under Section 319 Cr.P.C for summoning the respondents No.2 to 4 to face trial with the other accused. Learned counsel for the petitioner further contended that the names of respondents No.2 to 4 were specifically mentioned in the FIR as well the statement of the complainant, while appearing as prosecution witness. Even they had been assigned specific roles by PW-1 Ramesh Chander, petitioner and all of them had actively participated in the commission of crime. Thus, the Trial Court committed grave error in declining the prayer made by learned counsel for the petitioner.

5. The Hon'ble Supreme Court has held in the matter of Guriya @ Tabassum Tauquir and Ors. Vs. State of Bihar 2007(4) RCR (Criminal) 497:2008 AIR(Supreme Court) 95 as follows:-

“13. On a careful reading of Section 319 of the Code as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an accused, but not charge sheeted, can also be added to face the trial. The trial court can take such a step to add such persons as accused only on

*the basis of evidence adduced before it and not on the basis of materials available in the charge sheet or the case diary, because such materials contained in the charge sheet or the case diary do not constitute evidence. of course, as evident from the decision reported in **Sohan Lal and others v. State of Rajasthan, 1990(3) RCR (Criminal) 610** the position of an accused who has been discharged stands on a different footing.”*

*“14. Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it, if it is satisfied that any person other than accused has committed an offence and he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates evidence of witnesses given in Court. Under Sub-section (4)(1)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of Sub-section (4)(1)(b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned. (See **Lok Ram v. Nihal Singh and Anr., 2006(2) RCR (Criminal) 707 : 2006(2) Apex Criminal 71.**”*

“15. The factual position noted above goes to show that there was no new material after examination of the accused persons under Section 313 Criminal Procedure Code, which threw any light on the incident. The evidence of PWs 4 and 5 is not the basis of the

application under Section 319 Criminal Procedure Code as they have not spoken anything about the appellants.”

6. The Hon’ble Supreme Court of India has dealt with the issue in hand in a number of judgments and two of the most celebrated judgements in this regard are discussed hereinbelow:-

In “***Michael Machado and another versus Central Bureau of Investigation and another, 2000 (3) SCC 262***”, the Hon’ble Supreme Court of India held as under:-

“11. The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.

12. But even then, what is conferred on the court is only a discretion as could be discerned from the words the court may proceed against such person. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also

the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons”.

The Hon’ble Supreme Court in ‘**Manjeet Singh versus State of Haryana & others, 2021(4) RCR (Criminal) 25**’, held as under:-

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

- (i) That while exercising the powers under section 319 Cr.P.C, 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 Cr.P.C, 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 Cr.P.C, 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 Cr.P.C , 1973 only after the trial proceeds and commences with the recording of the evidence;

(xi) the word "evidence" in section 319 Cr.P.C, 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 Cr.P.C 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 Cr.P.C, 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 Cr.P.C, 1973 can be exercised;

(xv) that power under section 319 Cr.P.C, 1973 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 Cr.P.C, 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 Cr.P.C, 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”.

7. A perusal of Section 319 Cr.P.C. as also the judgment in **Michael Machado case's (supra) and Manjeet Singh's case (supra)** would clearly show that the Court has wide powers to summon a person as an additional who has been exonerated by the Investigating Agency, if it finds that there is sufficient evidence available against the said person in order to try him along with the accused already facing trial. However, there is no compelling duty to summon an accused. The discretionary power so conferred should only be exercised to achieve justice and must be based on the quality of evidence collected. In fact, the Court being the sole repository of justice, there is a duty cast upon it to uphold the law and ensure that the real accused should not get away by manipulating the Investigating Agency/Prosecuting Agency. What the Court needs to examine while adjudicating upon an application under Section 319 Cr.P.C. is that there should be evidence available on the file in the shape of oral

evidence or documentary evidence in order to invoke its powers to summon an additional accused under Section 319 Cr.P.C.

8. From the perusal of the record, it is evident that Suresh, real brother of the petitioner and Rahul son of Suresh, nephew of the petitioner are already facing the prosecution in the present case. Now by way of moving the instant application, the petitioner wants to summon Kamlesh wife of Suresh and Pankaj son of Suresh, nephew of the petitioner as additional accused. However, except, the statement of PW-1, Ramesh Chander, petitioner/complainant, there is no other evidence on record, which would justify the summoning of respondents No.2 to 4 in the present case. Apart from that, Suresh and his son Rahul are already facing the prosecution in the present case for causing injuries to the petitioner. However, now the petitioner wanted to summon Kamlesh wife of Suresh and Pankaj son of Suresh as additional accused, due to some land dispute between the family members. In fact, respondent No.4 Vikas was not even named in the FIR initially and later on, his name has been introduced by the present petitioner. Thus, it is apparent that there was no fresh evidence before the Trial Court, on the basis of which the accused/respondents No.2 to 4 may be summoned and the impugned order is legally sustainable. In the present case, after the framing of the charges, the petitioner himself appeared as PW-1 and named the respondents and other accused. However, except the statement of PW-1 Ramesh Chander, petitioner, there was no other evidence to connect the respondents No.2 to 4 with the alleged crime. Rather admittedly, there is a civil dispute pending between the parties and the possibility of the false implication of respondents No.2 to 4 by the present petitioner cannot be ruled out. Apart from that, respondents No.2 to 4 had been found to be innocent

during the course of investigation by the police and even the ACP (crime) had also investigated the matter, but no evidence could be collected during the course of investigation, which could prove the involvement of respondents No.2 to 4 in the present crime. Even otherwise, I have gone through the impugned order passed by the Trial Court and learned Trial Court has recorded valid reasons, while declining the present petition. The impugned order does not suffer from any material irregularity, irregularity or perversity and is liable to be upheld by this Court.

9. Sequally, the present revision petition filed by the present petitioner is ordered to be dismissed.

26.07.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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