

214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-631-2019
DECIDED ON: 08.02.2023
PRONOUNCED ON- 25.04.2023

HARJIT SINGH AND ANOTHER

.....PETITIONERS

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. K.S. Brar, Advocate
for the petitioners.

Mr. Mohit Chaudhary, AAG, Punjab.

Mr. Simrandeep S. Sandhu, Advocate
for respondents No.2 to 5.

SANDEEP MOUDGIL, J (ORAL)

Challenge in this revision petition is to Order dated 31/01/2019 whereby application moved by petitioners under Section 319 Cr.P.C., to summon Gurbachan Singh @ Billu, Harcharan Singh @ Baggi, Gurdev Singh Paharia and Bittu Singh as additional accused was dismissed.

The facts, relevant, vis-à-vis the controversy involved in the lis, may first be noticed. As per case of the prosecution, on 01/10/2016 Ram Singh Komal (since deceased) was going on his scooter to know about the well-being of Jagdish Singh alias Raja. He was followed by Complainant/Gurmukh Singh Chauhan, his son's father-in-law. When Ram Singh Komal reached near a vacant piece of land in Street No. 1, Patti Road, Barnala, he was waylaid by Harjinder Singh @ Minta, Hamir Singh, Raju Singh Lahari, Harcharan Singh @ Baggi, Kulwant Singh @ Raju, Manga Singh, Balwant Singh @ Kaka, Avtar Singh @

Titan, Gurdev Singh Paharia, Bittu Singh and three more unknown persons. Harjinder Singh @ Minta extorted that Ram Singh Komal may not be allowed to go alive and with the intention to kill, he gave rifle butt blow on his head and then all the other accused started beating him. They abducted and took him to a nearby house of one Gobind Arora and continued beating him. He raised hue and cry upon which Complainant/Gurmukh Singh Chauhan raised alarm which attracted people from adjoining houses who came there on which accused fled away from spot. On the statement of Complainant/Gurmukh Singh Chauhan FIR No. 311 dated 02/10/2016 under Sections 307, 364, 341, 427, 506, 201, 120B, 148 and 149 IPC was registered by the police at Police Station City Barnala, District Barnala. However, during treatment, Ram Singh Komal scummed to injuries on which offence under Section 302 IPC was added in the FIR.

Police investigated the matter and found Gurbachan Singh @ Billu, Harcharan Singh @ Baggi, Gurdev Singh Paharia and Bittu Singh (persons sought to be summoned as additional accused) to be innocent and put them in Column No. 2 of the Charge-Sheet.

During the course of trial, Prosecution examined PW-5 Harjit Singh and PW-6 Dalip Singh who named respondent Nos. 2 to 6 i.e., Gurbachan Singh @ Billu, Harcharan Singh @ Baggi, Gurdev Singh Paharia and Bittu Singh as accused. Therefore, prosecution moved an application under Section 319 Cr.P.C., to summon as additional accused. Vide impugned order dated 31/01/2019, the application was dismissed by the learned Trial Court.

Feeling aggrieved, the correctness and legality of the impugned Order has been challenged by petitioners on the ground that while passing the same, the learned Trial court has not appreciated the facts that respondent Nos. 2 to 6 have not only been named by PW-5 Harjit Singh and PW-6 Dalip Singh but they have

also been specifically named by the deceased-Ram Singh Komal in his statement recorded under Section 161 Cr.P.C., on 03/10/2016 by SI Deewan Chand. Even the statement of the deceased was video-graphed by police, copy of which has been placed on record as Annexure P-2, a perusal of which would show that the deceased has specifically named the respondents, sought to be the accused. The said statement of the deceased amounts to dying declaration which is admissible in evidence. However, the learned Trial court has not taken the same into consideration and without assigning any reason and rather on the basis of conjectures and surmises, discarded testimony of PW-5 Harjit Singh and PW-6 Dalip Singh only on the ground that in inquiry held by police they have not levelled any allegations against the respondent Nos. 2 to 6.

Learned counsel argued that this approach on the part of the Trial court has resulted in grave miscarriage of justice as the learned Court has not appreciated the fact that it is the statement of witness on oath in court which should be relied upon and particularly when the police has not investigated the case in a fair and proper manner.

With these submissions, the learned Counsel for the petitioners prayed for acceptance of revision petition and to set aside impugned order and to summon respondent Nos. 2 to 6 under Section 319 Cr.P.C., to face trial along with other accused. In support of his submission learned Counsel prays reliance upon "**Babubhai Bhimabhai Bokhiria v State of Gujarat**" 2014(1) SCC (Crl) 229, referring to para No. 16 which can be read as under:

"16. There is another angle from which the matter can and must be examined. The prosecution has already examined as many as 134 witnesses at the trial. In terms of the ratio of the direction of this Court in Shashikant Singh's case (supra) with the addition of the petitioner as accused all those witnesses shall have to be recalled for a fresh examination. If that be so, the trial would go on for a few more years having regard to the number of witnesses that have to be examined. This would in turn mean that the right of the accused to a speedy trial, that they have laboured to complete within six years or so, will be in serious

*jeopardy on account of the entire process being resumed de novo. Such a result is manifestly unjust and unfair and would be perilously close to being in violation of the fundamental rights guaranteed to the accused persons who cannot be subjected to the tyranny of a legal process, that goes on endlessly for no fault of theirs. This Court has in several pronouncements emphasised the need for speedy trials in criminal cases and recognised the same as an integral part of the right to life itself. In "**Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar, Patna**" (1980)1 SCC 91, this Court held that an expeditious trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution. In "**A.R. Antulay v. R.S. Navak**", 1992(2) R.C.R.(Criminal) 634: (1992)1 SCC 225, this Court declared that speedy trial is not only the right of the accused but is also in public interest and that the right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial. In "**Sher Singh v. State of Punjab**", 1983(1) R.C.R.(Criminal) 274: (1983)2 SCC 344, this Court sounded the following note of caution against delay of criminal trials:*

16... The essence of the matter is that all procedure, no matter what the stage, must be fair, just and reasonable Article 21 stands like a sentinel over human misery... It reverberates through all stages-the trial, the sentence, the incarceration and finally, the execution of the sentence."

On the other hand, learned Counsel for respondent Nos. 2 to 6 vehemently supported the impugned order and argued that findings recorded by learned Trial court do not warrant an interference as PW-5 Harjit Singh and PW-6 Dalip Singh are not reliable witnesses because during the inquiry conducted by the police, they have categorically denied involvement of Respondents in the occurrence and rather exonerated them. Moreover, even the Complainant-Gurmukh Singh Chauhan has not supported the prosecution version. With these submissions the learned Counsel prayed for dismissal of the application.

Having given thoughtful consideration to the rival submissions of the parties and having perused the record of the case minutely and carefully, I am of the considered view that revision petition merits rejection being devoid of merit.

Admittedly. Complainant/Gurmukh Singh Chauhan has not supported the prosecution version. As far as PW-5 Hardip Singh and PW-6 Dalip Singh are concerned, their statements were recorded after a long gap of two months from the Cdate of occurrence. Otherwise also, from the record available on file, it transpires that during the inquiry conducted by the police they have not levelled

allegations against the respondent Nos. 2 to 6 and have not attributed any role to them. They were also not cited as eye-witnesses in the FIR. Furthermore, when Harjit Singh stepped into the Witness Box as PW-5, he was duly confronted with portion A to A of his statement Ex PW-5/A recorded under Section 161 Cr.P.C., wherein he stated that Harcharan Singh @ Baggi, Gurdev Singh Paharia and Bittu Singh were not present at the time of occurrence. Though PW-5 Harjit Singh specifically deposed that he does not admit his statement recorded under Section 161 Cr.P.C., to be correct, however, the learned Trial court has rightly held that he has not given any reason as to why earlier he stated that persons sought to be summoned as additional accused were not present at the time of occurrence. Similarly, PW-6 Dalip Singh also denied knowing whether he has mentioned name of Gurbachan Singh @ Billu and Hamir Singh in his statement mark PW-6/A. Moreover, name of Gurdev Singh Paharia is altogether missing from testimony of PW-6 Dalip Singh. Further, even in his statement under Section 161 Cr.P.C., Ram Singh Komal has not specifically stated that Gurbachan Singh @ Billu was also present and participated in the crime and rather he has simply levelled allegations that since he being the President of Rajpoot Welfare Sabha rusticated Gurbachan Singh @ Billu along-with Kulwant Singh @ Raji and Harjinder Singh @ Minta from the Sabha, therefore, he was nursing grudge against him and attacked him.

The Apex Court in the case of "Hardeep Singh vs. State of Punjab"

2014 (3) SCC 92 has held as under:-

"11. Section 319 Cr.P.C. as it exists today, is quoted hereunder:

319 Cr.P.C. 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."

12. Section 319 Cr.P.C. springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C. It is the duty of the Court to do justice by punishing the real culprit.

15. Section 319 Cr.P.C. allows the court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the charge-sheet filed under Section 173 Cr.P.C. or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

16. The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot free by being not arraigned in the trial in spite of possibility of his complicity which can be gathered from the documents presented by the prosecution.

17. 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. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."

This dispute is no more res integra and has been dealt with in so many cases and in **"Guriya alias Tabassum Tauquir v. State of Bihar"**, AIR 2008 SC 95, the Apex Court had occasion to analyze Section 319 Cr.P.C., and it was observed as under:

"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 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."

Section 319 Cr.P.C., was also subject-matter in **"Y. Saraba Reddy Vs. Puthur Rami Reddy", 2007(6), JT, (SC) 460: 2007 AIR SCW 6258** and the Apex Court propounded as follows:

"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 proceedings 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 FIR 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 material 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."

Undoubtedly, the power under section 319 Cr.P.C., is vast vast one. Although vast power should be exercised sparingly, but while exercising the power, the trial Court should be aware of the very purpose for which the Courts have been established. Although every person is presumed to be innocent, but it is the duty of the trial Court to adjudge the innocence or the guilt of the person. In grave offences, in case there is sufficient evidence to indicate or to point towards the involvement of a person, who has not been charge-sheeted by the police, ordinarily the Court should proceed against him. The guilt and involvement of a person in grave offences should not be overlooked on the basis of hyper-technicalities and should not be ignored by myopic vision. For, the purpose of criminal justice system is to protect the society from those persons who violate the law and who pose a threat to the society at large. The protection of the society from offenders is foundation, or *raison detre* (reason to be) of the criminal Courts. Therefore, if there is sufficient evidence against a person, the trial Court would be justified in proceeding against such a person.

Criminal Justice System has been considered by the Hon'ble Apex Court in the case of **"Rajendra Singh v. State of U.P." (2007) 3 SCC (Cri) 375** and observed as under:

"The power under Section 319 Cr.P.C., is conferred on the Court to ensure that justice is done to the society by bringing to book all those guilty of an offence. One of the aims and purpose of the criminal justice system is to maintain social order. It is necessary in that context to ensure that no one who appears to be guilty escapes a proper trial in relation to that guilt. There is also a duty to render justice to the victim of the offence. It is in recognition of this that Cr.P.C. has specifically conferred a power on the Court to proceed against others not arrayed as accused in the circumstances set out by Section 319 Cr.P.C. It is a salutary power enabling the discharge of a Court's obligation to the society to bring to book all those guilty of a crime.

While applying its judicious mind on an application under Section 319 Cr.P.C., the trial Court cannot go into microscopic discussion of the evidence. It is required to see the existence of a strong prima facie case against the alleged accused. At the initial stage of proceeding against the person, the trial Court is not concerned with the issue whether the trial would conclude with a conviction or not. Since the provision of Section 319(4)(a) envisages a fresh trial for the newly added accused, fresh evidence needs to be recorded, the evidence so recorded has to be discussed and analyzed by the trial Court. Thus, the trial Court is not required to meticulously discuss the evidence while exercising the power under section 319 Cr.P.C."

Cautioning against issuing of process so that it should not be an instrument in the hands of the private complainant as vendetta to harass the person needlessly, the Hon'ble Apex Court in **"Punjab National Bank and others Vs. Surendera Prasad Sinha", 1993 Supp. (1) SCC 499** held that -

"It is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and host of officer. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At this stage, the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against the appellants without any prima facie case to harass them from vendetta."

The Supreme Court in the case of **"Sukhpal Singh Khaira vs. State of Punjab" 2023 (1) SCC 289**

"33. III. What are the guidelines that the competent court must follow while exercising power under Section 319 CrPC, 1973?"

(i) If the competent court finds evidence or if application under section 319 of CrPC, 1973 is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage. (ii) The Court shall thereupon first decide the need or otherwise to summon the additional

- accused and pass orders thereon.*
- (iii) If the decision of the court is to exercise the power under section 319 of CrPC, 1973 and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.*
- (iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.*
- (v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.*
- (vi) If the decision is that the summoned accused can be tried separately. on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.*
- (vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.*
- (viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under section 319 of CrPC, 1973 can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.*
- (ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under section 319 of CrPC, 1973 the appropriate course for the court is to set it down for re-hearing.*
- (x) On setting it down for re-hearing, the above laid down procedure to decide about summoning: holding of joint trial or otherwise shall be decided and proceeded with accordingly.*
- (xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.*
- (xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier:*
- (a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.*

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused."

Coming back to the case in hand, in view of the above discussion, no ground is made out to interfere in the well-reasoned order passed by learned Sessions Judge, Barnala.

Consequently, the revision petition is dismissed.

25.04.2023

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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No