

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

(258)

**CRR-627-2022 (O&M)
Date of Decision: 16.01.2023**

Harbans Kaur and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.Amandeep Singh, Advocate, for the petitioners.

Mr. Ravinder Singh, AAG, Punjab.

Mr. Manuj Nagrath, Advocate, for the complainants.

HARKESH MANUJA, J.(ORAL)

By way of present petition, challenge has been made to an order dated 16.03.2022 passed by the Court of learned Additional Sessions Judge, Ludhiana, whereby, an application moved at the instance of prosecution, invoking Section 319 Cr.P.C., for the purpose of summoning of the petitioners has been allowed.

Facts leading to the present case are that an FIR No.61 dated 30.04.2017 was registered under Sections 302/34 IPC and under Section 25 and 27 of the Arms Act, at Police Station Sadar Raikot, Ludhiana, at the instance of Gurmeet Kaur i.e. respondent No.2 herein thereby implicating the petitioners besides one Hardeep Singh for alleged murder of her father namely Shingara Singh. During investigation, based on an inquiry report dated 28.07.2017, the petitioners were placed in Column No.2, whereas, *challan* was presented only against Hardeep Singh. During trial, the complainant/respondent No.2 Gurmeet Kaur appeared as PW-1 being the eye-

Relying thereupon, the prosecution moved an application invoking Section 319 Cr.P.C., for the purpose of summoning of the petitioners to face trial in the aforementioned FIR. The Additional Sessions Judge, Ludhiana, vide order dated 16.03.2022, allowed the prayer made under Section 319 Cr.P.C. thereby summoning the petitioners to face trial under Sections 302/341 IPC along with Sections 25 and 27 of Arms Act. It is the aforesaid order which has been impugned by way of present revision petition.

Learned counsel for the petitioner vehemently submits that in the wake of inquiry report dated 28.07.2017, exonerating the petitioners coupled with mere reiteration of the contents of the FIR by Gurmeet Kaur (PW-1) in her deposition made before the Court, the trial Court committed an error of law while summoning the petitioners. He also submits that while exercising the powers under Section 319 of the Cr.P.C., the trial Court was required to record its *prima facie* satisfaction as regards the possibility of conviction of the individual sought to be summoned.

On the other hand, learned State counsel assisted by Mr. Manuj Nagrath, Advocate, appearing on behalf of respondent No.2 supported the order passed by the trial Court while submitting that the inquiry report dated 28.07.2017 as relied upon by the petitioners was not based on statements of any of the villagers who did not even come forward for the said purpose under the threat of enmity with the alleged accuseds. It was also contended that in view of specific allegations made against the petitioners in the deposition of PW-1, at this stage only a *prima facie* view was required to be expressed by the trial Court.

I have heard learned counsel for the parties and gone through the paper book. I am unable to accept the submissions made on behalf of petitioners.

The complainant/respondent No.2 Gurmeet Kaur while appearing

as PW-1 before the trial Court has attributed specific and categoric role to each of the petitioners which, thus, has to be appreciated and evaluated by the trial Court and cannot be ignored and discarded at this stage. A relevant extracts from the statement of PW-1 is reproduced hereunder for reference:

“.....When I and Jaspreet Kaur reached outside the village near the graveyard we saw that Hardeep Singh S/o Sukhdev Singh, Sukhdev Singh S/o Santa Singh, Jugraj Singh S/o Sukhdev Singh and Harbans Kaur W/o Sukhdev Singh encircled my father along-with the tractor. Harbans Kaur had caught hold my father from his arms. Front light and back light of the tractor were on. Accused were having black colour Scorpio at that time. Number of the same I do not remember Hardeep Singh was armed with 12 bore rifle. Harbans Kaur extorted ‘maar deo isnu atte sanu saja karan da sabak sikha deo’. After hearing the lalkara raised by Harbans Kaur, Hardeep Singh opened the fire with his 12 bore gun which hit near the head of my father Shingara Singh. There-after Sukhdev Singh took the gun from Hardeep Singh and opened the fire towards my father Shingara Singh which hit near left ear of my father. There-after Jugraj Singh took the gun from Sukhdev Singh and opened the fire towards my father Shingara Singh which hit on the left side of stomach of my father. Mr father fell down due to the injury. Hardeep Singh drove the tractor of my father and struck against transformer and rear tyre of the tractor touched with the body of my father. Then Harbans Kaur took out the kheer from scorpio car and threw the same near my father’s body and raised lalkara that we have taken the revenge as stated earlier.....”

From a perusal of the portion of deposition of PW-1, It can be *prima facie* recorded that the petitioners appear to have some role to play in the alleged offence. At this stage, reference in this regard may be made to case

titled as **Rajendra Singh Vs. State of U.P. & Anr., 2007(3) R. C. R. (Supreme Court) 1022**. The relevant portion of para No.15 of the same is reproduced as under:

“15. Section 319(1), which is relevant for our purpose reads :

"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."

As I see it, the words are plain and the meaning clear. When in the course of the enquiry or trial, it appears to the court from the evidence that a person, not arrayed as an accused, appears to have committed any offence for which that person could be tried together with the accused, the court may proceed against that person. Surely, it must appear to the Court from the evidence that someone not arrayed as an accused, appears to have committed an offence. 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. With great respect, I see no reason to describe the power as an extraordinary power or to confine the exercise of it only if compelling reasons exist for taking cognizance against any other person against whom action has not been taken. After all, the section only gives power to the court to ensure that all those apparently involved in the commission of an offence are tried together and none left out. I see no reason to curtail this power of the court to do justice to the victim and to the society. It appears to me that it is left to the judicial discretion of

the court, judicially trained, to decide to proceed or not to proceed against a person in terms of Section 319 of the Code.”

More than that a perusal of the inquiry report dated 28.07.2017 shows that the same was prepared without even recording statement of any of the independent witness from the villagers and thus, at this stage much credence cannot be placed upon it by relying upon the same for the purpose of adjudication of the present revision petition.

For the reasons recorded hereinabove, the impugned order dated 16.03.2022 passed by the Court of learned Additional Sessions Judge, Ludhiana, warrants no interference. Resultantly, the present revision petition is dismissed but with no orders as to costs.

(HARKESH MANUJA)
JUDGE

16.01.2023
anil

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