

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

CRM-M-18794-2023 (O&M)
Date of Decision: 18.04.2023

Satish and another

..... Petitioners

Versus

The State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. R.K. Choudhary, Advocate, for the petitioners.

Rajesh Bhardwaj, J.

Petitioners have approached this Court by way of filing the present petition for quashing of the order dated 14.02.2023 passed by learned Additional Sessions Judge, Palwal, vide which the order passed by learned JMIC, Palwal in a case FIR No.368, dated 15.11.2015, registered under Sections 323, 506, 34 IPC at Police Station Chandhuth titled as State vs. Prem Chand, dismissing the application under Section 319 Cr.P.C. filed by respondent No.2 for summoning the petitioners, has been set aside and the petitioners are ordered to be summoned as additional accused.

As per facts of the case, the present FIR was registered on the statement of Chanderwati wife of Kishalpal, alleging therein that on 09.11.2015, she alongwith Santosh wife of Harpal, Sheetal wife of Raj Kumar and Raj Bala wife of Harpal went to the fields to collect fodder. In the field, Prem son of Hari Ram, Kharag Singh son of Prem Chand and Satish son of Prem Chand attacked them with sticks and rods and chased them away from the fields. Prem gave kick blow in the stomach of the complainant and hit her with sticks, whereas, Kharag Singh and Satish (petitioners) hit them with sticks and rods. On their raising noise, they ran away by giving threats to kill them. On the basis of the complaint, the FIR

was registered and the investigation commenced. On completion of the investigation, the challan was presented against Prem, whereas the petitioners i.e. Kharag Singh and Satish were declared innocent and kept in column No.2. The learned trial Court framed charges and proceeded with the examination of the prosecution witnesses. The complainant was examined by the learned trial Court as PW-3 and she deposed in her examination-in-chief that Prem hit her with stick in her left leg, Kharag Singh hit her with stick on the waist and Satish hit her on the head with a stick. She further deposed that Prem gave kick blow in her stomach. On the basis of the same, application under Section 319 Cr.P.C. was filed for summoning the petitioners as additional accused. The learned trial Court after hearing both the sides, dismissed the same vide order dated 17.02.2022. The complainant-revisionist assailed the same by way of filing revision petition before the learned Additional Sessions Judge, Palwal. The learned revisional Court accepted the same and set aside the order passed by learned JMIC, Palwal vide its order dated 14.02.2023. Aggrieved by the same, the petitioners are before this Court by way of filing the present petition.

It has been vehemently contended by learned counsel for the petitioners that the learned revisional Court has miserably failed in appreciating the evidence on record and the law settled and thus, illegally set aside the order passed by the learned trial Court in dismissing the application under Section 319 Cr.P.C. filed by the complainant. He submits that from the facts and circumstances of the case, it is apparent that there is a property dispute between the parties and not only this a civil litigation is also pending between both of them. He submits that as the other party wants

to take the possession of the property, the petitioners have been falsely implicated in this case. He submits that after registration of the FIR, the matter was thoroughly investigated by the Investigating Agency and no material was found against the petitioners and thus their complicity was not proved and they were declared innocent. He further argued that the revisional Court has failed to appreciate the statement of the injured recorded under Section 161 Cr.P.C., wherein she has made no specific allegations against both the petitioners. He submits that the injured were medically examined and Doctor also prepared their MLR. He submits that the Doctor, who was examined as PW-2 opined that there is possibility that the injuries suffered by the injured could be by fall. He further submits that Hon'ble Supreme Court has time and again held that summoning under Section 319 Cr.P.C. cannot be ordered by the Court in a casual manner. He submits that once the petitioners have been declared innocent by the Investigating Agency, there are no chances of their conviction. He also submits that there was no new evidence produced by the prosecution for summoning of the petitioners and thus, the impugned order passed by the learned revisional Court deserves to be set aside.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is apparent that the present FIR has been lodged by the injured-complainant. In the initial version made by the complainant, three accused, namely, Prem son of Hari Ram, Kharag Singh son of Prem Chand and Satish son of Prem Chand, have been specifically named. It has been specifically alleged that they were duly armed and they gave beatings to the complainant and other three injured, namely, Santosh wife of Harpal,

Sheetal wife of Raj Kumar and Raj Bala wife of Harpal. Statement of injured Sheetal was recorded under Section 161 Cr.P.C. and she made statement qua all three accused, who gave them beatings. All the four injured were medically examined and their MLRs were prepared. As per the MLR, 14 injuries in all were found to be suffered by all four injured. During the trial examination-in-chief of complainant Chanderwati was recorded as PW-3 and she reiterated her allegations as made at the initial stage. Though both the petitioners were declared innocent by the Investigating Agency, however, from the evidence on record, the allegations against the petitioners are consistent. The oral allegations made by the injured witnesses have also been observed by the Doctor, who examined them medically. It is admitted fact that both the parties are already involved in a property dispute for which civil litigation is also pending between both of them.

To understand the controversy in the case, statutory provisions of Section 319 Cr.P.C. is necessary to be considered, which is reproduced as under:-

“Section 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.

(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 subsection (1), then-
(a) the proceedings in respect of such person shall be commenced a fresh, 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.”

The Constitutional Bench of Hon'ble Supreme Court in **Hardeep Singh vs. State of Punjab and others, (2014) 3 SCC 92** has held that the satisfaction of the Court against the proposed accused for summoning him/her to face the trial should be more than required at the time of framing of charge. Relevant paras of the same are reproduced as under:-

“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.”

From facts and circumstances of the present case when weighing on the anvil of the law settled, it is apparent that there was sufficient material before the revisional Court, which could be termed as sufficient or more than *prima facie* case made out for framing of charge for summoning the petitioners. Hon'ble Supreme Court has held that the Court should refrain from exercising its power under Section 319 Cr.P.C. in a mechanical manner. It has been held that power under Section 319 Cr.P.C. should be used sparingly in exceptional circumstances.

Weighing the facts and circumstances of the present case on the anvil of law settled by the Hon'ble Supreme Court, this Court finds no infirmity in the view taken by the learned revisional Court. Resultantly, the present petition is dismissed being devoid of any merit.

18.04.2023
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No