

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

Sr. No.234

**CRR No.1430 of 2016 (O&M)
Date of Decision : March 03, 2023**

Kuldeep

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Ajay Kumar, Advocate, for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

Mr. Aditya Yadav, Advocate, for respondent No.2.

SUDHIR MITTAL, J. (ORAL)

FIR No.140, dated 03.05.2014 was registered at Police Station Kanina, District Mahendergarh under Sections 302, 120-B, 216 & 34 IPC after the complainant namely Mehar Chand son of Harphool Singh had got a statement recorded that at about 4.30 pm while he was sitting in his shop along with his brother Desh Raj, he noticed one Bahadur Singh sitting in a hotel opposite to the shop and talking on the mobile phone. Soon thereafter, a white coloured car came and three persons alighted therefrom. They hit a pitcher on the head of his brother Desh Raj and also gave rod and danda blows. These three persons were named as Manjeet s/o Ran Singh, Pawan @ Pondi s/o Ram Swarup and Jagga r/o Charkhi Dadri. After the incident, they fled from the spot while threatening those present and brandishing a pistol.

2. Proceedings to declare Jagga as well as petitioner-Kuldeep as proclaimed persons were initiated. Vide order dated 11.11.2014 Jagga was declared as a proclaimed offender but proceedings against the petitioner-

Kuldeep were dropped as the police officials had stated that he was innocent. On 12.11.2014, an application under Section 319 Cr.P.C. was filed for summoning Bahadur as an additional accused. This application was finally dismissed. Trial against Manjeet and Pawan @ Pondi proceeded and they were convicted vide judgment dated 07.08.2015. Thereafter, Jagga was arrested and brought before the Court and trial against him started. During the pendency thereof, application under Section 319 Cr.P.C. dated 26.10.2015 was filed for summoning petitioner-Kuldeep as an additional accused. This application has been allowed vide impugned order dated 30.01.2016.

3. Learned counsel for the petitioner has submitted that the eye-witnesses had named the petitioner-Kuldeep as an accused in their statement dated 01.12.2014. The trial concluded vide judgment dated 07.08.2015. Thus, there was adequate time for the prosecution to file an application under Section 319 Cr.P.C. for summoning the petitioner as an additional accused. However, the same was not done. The application was in fact filed during the pendency of the trial against co-accused Jagga. This shows that the prosecution did not consider the petitioner as a perpetrator of the crime. This is also evident from order dated 11.11.2014 wherein, it has been recorded that the petitioner had been declared innocent by the investigating agency. Thus, filing of the application dated 26.10.2015 was an abuse of the process of the criminal law. It has also been submitted that the main trial concluded on 07.08.2015. Trial of co-accused Jagga was only an offshoot thereof. Thus, the application under Section 319 Cr.P.C. was not maintainable as the same could have only been filed during the pendency of the main trial.

4. Learned counsel for the complainant has submitted that trial against co-accused Jagga was not an offshoot but was a continuation of the main trial. Thus, the application which has resulted in passing of the impugned order was maintainable. Moreover, there is no limitation for filing a petition under Section 319 Cr.P.C.

5. Learned State counsel supports the submissions made by learned counsel for the complainant.

6. Thus, the questions which arise for consideration are (1) whether the trial against Jagga was just an offshoot of the main trial or can be considered as “*main trial*” within the meaning of Section 319 Cr.P.C. keeping in view the facts and circumstances of this case and (2) whether the prosecution is estopped by its act and conduct from filing the application under Section 319 Cr.P.C.

7. Learned counsel for the parties have relied upon a Constitution Bench judgment in ***Sukhpal Singh Khaira Vs. State of Punjab, 2023 (1) SCC 289***. Learned counsel for the petitioner has submitted that the evidence sought to be relied upon for summoning the petitioner an an additional accused was also available on record during the trial of Manjeet and Pawan @ Pondi. Thus, the order of summoning is illegal as it is not based upon evidence produced during the course of the trial of Jagga. The judgment in ***Sukjpall Singh Khaira (supra)*** supports this contention.

8. Learned counsel for respondent No.2 however submits to the contrary. His submission is that additional accused can be summoned even during the trial of accused who could not be tried earlier as he/they were absconding. The bifurcated trial is a continuation of the main trial and there is no bar to summoning of an additional accused once the witnesses who had

get their statements recorded earlier have reiterated the same in the trial against the absconding accused.

9. A perusal of **Sukhpal Singh Khaira (supra)** shows that the questions framed by the Constitution Bench were as under:

“I. Whether the trial court has the power under section 319 of CrPC, 1973 for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

II. Whether the trial court has the power under section 319 of the CrPC, 1973 for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

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

10. Question (II) is relevant to the present dispute.

11. The answer thereto is given as below:-

“30. One other aspect which is necessary to be clarified is that if the trial against the absconding accused is split up (bifurcated) and is pending, that by itself will not provide validity to an application filed under section 319 CrPC, 1973 or the order of Court to summon an additional accused in the earlier main trial if such summoning order is made in the earlier concluded trial against the other accused. This is

so, since such power is to be exercised by the Court based on the evidence recorded in that case pointing to the involvement of the accused who is sought to be summoned. If in the split up (bifurcated) case, on securing the presence of the absconding accused the trial is commenced and if in the evidence recorded therein it points to the involvement of any other person as contemplated in section 319 of CrPC, 1973, such power to summon the accused can certainly be invoked in the split up (bifurcated) case before conclusion of the trial therein.”

12. The aforementioned observations are clear and unambiguous. An additional accused can be summoned even during the course of a bifurcated trial based upon the evidence recorded therein. It is not in dispute that the witnesses who had named the petitioner as an accused during the trial of Manjeet and Pawan @ Pondi had reiterated their submissions while being examined in the trial of Jagga. Thus, the trial Court was justified in passing the impugned order.

13. Question No.II is accordingly answered in the affirmative.

14. The second question pertains to the principle of estoppel. Learned counsel for the petitioner has argued in favour of applicability of the principle whereas the respondent No.2 has argued against it.

15. It is settled law that principle of estoppel is a principle of evidence and rights cannot be governed by the same. Moreover, there can be no estoppel against the statute. In the present case, there cannot be any applicability of the said principle as it would result in barring the prosecution from exercising its right to summon an additional accused which

would also be against the statute. Thus, the second question is also answered in the negative.

16. In view of the above, the revision petition has no merit and is dismissed.

17. Pending miscellaneous application if any also stands disposed of.

March 03, 2023
Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No