

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

CRR-2868-2015 (O&M)

Date of Decision: January 31, 2023

Gurtej Singh

...Petitioner

Versus

State of Punjab and another

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Amaninder Singh Sekhon, Advocate for the petitioner.

Mr. Parneet Singh Pandher, AAG, Punjab.

Mr. Ranjit Singh Ghuman and

Ms. Shashi Ghuman, Advocates for respondent No.2.

DEEPAK GUPTA, J.(Oral)

This revision is directed against the order dated 10.07.2015 passed by the Court of learned Sessions Judge, Faridkot, dismissing the application under Section 319 Cr.P.C. to summon Parabhjinder Singh alias Shani as an additional accused, during the trial of the case arising out of FIR No.34 dated 23.04.2014, registered at Police Station Bajakhana, District Faridkot, under Sections 302, 307 and 34 of IPC and Section 27 of the Arms Act, 1959.

2. FIR was lodged on the complaint of Gurtej Singh (petitioner herein), as per which on 23.04.2014, he along with his brother Manpreet Singh were cultivating the land of their uncle Pargat Singh. Fields of Avtar Singh S/o Gurjant Singh employed as Punjab Police Hawaldar adjoins to their fields. Said Avtar Singh along with his sons Soni and Shani stopped their tractor, lifted their kurta and started cracking obscene jokes. Avtar Singh raised *lalkara* asking them to run away and then took

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out pistol from his dub, whereas his sons Soni armed with *kulhari* and Shani armed with *sabbal* ran towards them. It was alleged further by complainant Gurtej Singh that he and his brother tried to run, when Avtar Singh with the intention to kill them fired gun shots hitting Manpreet Singh. One shot also hit left thigh of complainant Gurtej Singh. Avtar Singh's son Soni gave axe blow on the back side of chest of the complainant; whereas Shani threw *sabbal* towards him which crossed over his head. Manpreet Singh died at the spot.

3. After registration of the FIR, investigation was carried out, during which Harjinder Singh alias Soni and Parabhjinder Singh alias Shani were found innocent and kept in column No.2 of the challan. Application was moved by complainant Gurtej Singh under Section 190 Cr.P.C. for arraigning Harjinder Singh alias Soni as an accused and take cognizance against him, which was allowed, whereas the application moved by the police to release said accused from custody, was dismissed. The case was committed to prosecute accused Avtar Singh and his son Harjinder Singh @ Soni.

4. During the trial, application was moved by the prosecution under Section 319 Cr.P.C. to summon Parabhjinder Singh @ Shani as an additional accused to face trial along with main accused Avtar Singh and Harjinder Singh @ Soni. That application has been dismissed by the learned Sessions Judge, Faridkot, vide order dated 10.07.2015 against which this revision is preferred.

5. It is contended by learned counsel for the petitioner that name of Parabhjinder Singh @ Shani was clearly disclosed in the FIR.

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Specific role was attributed to him. Inquiry report holding said Parabhjinder Singh @ Shani as innocent was rejected. Co-accused Harjinder Singh @ Soni had preferred revision, which was dismissed. The case was then committed to the Court of Sessions and during the trial, petitioner Gurtej Singh examined as PW1 categorically named Parabhjinder Singh @ Shani as one of the assailants and therefore, the impugned order is liable to be set aside.

6. Upon notice of motion issued to the respondents, appearance has been made on behalf of respondent No.2, who strongly opposed the petition. At the outset, learned counsel for respondent No.2 placed on record copy of the judgment dated 06.05.2019 passed by learned Sessions Judge, Faridkot, whereby Avtar Singh and Harjinder Singh @ Soni have since been convicted in Sessions Case No.35 of 2014. It is contended by learned counsel that as trial has since been concluded, therefore, Section 319 Cr.P.C. has no applicability. Reliance is placed upon the judgment of the Hon'ble Supreme Court of India in case of ***“Sukhpal Singh Khaira vs The State of Punjab”***, reported as 2019(5) R.C.R. (Criminal) 864.

7. On the other hand, learned counsel for respondent No.2 has referred to the judgment of the Hon'ble Supreme Court in case of ***“Shashikant Singh vs Takeshwar Singh”*** reported as 2002(3) R.C.R. (Criminal) 191 to contend that a person summoned as an additional accused has to face a de-novo trial, which is mandatory, even if the trial against the other accused has concluded.

8. I have considered submissions of both the sides and have perused the record carefully.

9. In ***Shashikant Singh's*** case (*supra*), during the pendency of the trial of an accused, another person was summoned by the Trial Court under Section 319 Cr.P.C. but by the time he could be brought before the Court, the trial against the challaned accused was over. It was held by the Hon'ble Supreme Court that the words "could be tried together with the accused" in Section 319 (1) Cr.P.C. were mere directory and if the trial against other accused is over, such a person, who was subsequently added as an accused could be tried after the conclusion of the trial of the main accused.

10. In ***Sukhpal Singh Khaira's*** case (*supra*), additional accused was summoned after conclusion of trial under Section 319 Cr.P.C. To consider the question, as to whether Trial Court has the power under Section 319 Cr.P.C. for summoning additional accused, when trial with respect to other co-accused has ended and judgment of conviction rendered on the same date before pronouncing judgment, the said substantial question was referred to the larger Bench.

11. Facts of the present case are quite distinguishable. During the trial against Avtar Singh and Harjinder Singh @ Soni, though application under Section 319 Cr.P.C. was moved to summon Parabhjinder Singh @ Shani as an additional accused, but that application was dismissed by way of the impugned order dated 10.07.2015. In ***Shashikant Singh's*** case (*supra*), the application under Section 319 Cr.P.C. had been allowed during the pendency of the trial but by the time he was brought before the Court, the trial against other accused had already come to an end.

12. In the present case, trial against Avtar Singh and Harjinder Singh @ Soni has come to an end on 06.05.2019 and by that time, there was no summoning order against Parabhjinder Singh @ Shani. In the circumstances, no advantage can be given to the prosecution of the legal position explained in *Shashikant Singh's* case (*supra*).

13. Apart from above, Section 319 Cr.P.C. reads as under:-

“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) & (3) xxxxxxxxxxxx (not relevant)

(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.”

14. The words “*in the course of any inquiry into or trial of an offence*” as appearing in Section 319(1) Cr.P.C. makes it is abundantly clear that order to summon an additional accused under Section 319 Cr.P.C. should be passed during the pendency of the trial. Once the trial is over, Section 319 Cr.P.C. cannot be pressed into service, unless some other accused was absconding, for whom a *de-novo* trial can be ordered after his apprehension.

15. In the present case, except for respondent No.2 Parabhjinder

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Singh @ Shani and two accused Avtar Singh and Harjinder Singh @ Soni, who have faced trial, no one else was named in the FIR. Trial against Avtar Singh and Harjinder Singh @ Soni has already come to an end. Therefore, no summoning order at this stage can be passed under Section 319 Cr.P.C. for Parabhjinder Singh @ Shani to face trial.

16. Apart from above, the issue regarding the scope and extent of power of the Court to arraign any person as an accused **during the course of inquiry or trial** in exercise of the power under section 319 Cr.P.C. has been set at rest by a Constitutional Bench of Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab, 2014 (1) R.C.R. (Criminal) 623** followed by another pronouncement in **Babubhai Bhimabhai Bokhiria and Another Vs. State of Gujarat and others, 2014 (2) RCR (Criminal) (SC) 915.**

17. After reviewing various precedents, Hon'ble Apex Court summarized the legal position in **Hardeep Singh's case (cited supra)** in the following words:

"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.

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."

18. After referring to aforesaid authority of Constitutional Bench, Hon'ble Supreme Court held in **Babubhai Bhimabhai Bokhiria's case (cited supra)** as under:

"Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher."

Same view has been reiterated in **Shiv Prakash Mishra vs. State of Uttar Pradesh 2019 (5) RCR (Criminal) 946.**

19. In the light of above said legal position, when the facts of the present case are analysed, it is seen that the only allegation against respondent No.2 is that he along with other co-accused had run towards complainant and the deceased. Another attribution to him is that he had thrown *sabhal* towards the complainant, which had crossed over his head. It is, thus, clear that no injury is attributed to Parabhjinder Singh @ Shani.

20. Apart from this, learned Sessions Judge, Faridkot in the impugned order has noticed that when the matter was under investigation, Gurpreet Kaur, the mother of Parabhjinder Singh @ Shani

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had moved an application on which inquiry was conducted by the DSP, Jaito, who vide his report dated 15.05.2014 found Parabhjinder Singh @ Shani to be innocent. Further inquiry was conducted by the S.P. (H), who vide his inquiry report dated 12.07.2014 found another accused Harjinder Singh @ Soni also to be innocent. When challan was presented in the Court, both Parabhjinder Singh @ Shani and Harjinder Singh @ Soni were placed in column No.2 of the report under Section 173 Cr.P.C. Though, application was moved by the complainant under Section 190 Cr.P.C. for taking cognizance against Harjinder Singh @ Soni but no such application was moved against Parabhjinder Singh @ Shani. No prayer at that time was made to take cognizance against Parabhjinder Singh @ Shani.

21. Although in the FIR as well as statement, Gurtej Singh during his testimony as PW1 had named Parabhjinder Singh @ Shani to be present at the time of crime but as noticed earlier, there is no attribution of injury to him. The evidence on record is not of such a nature that it can be said to be such nature that it will reflect a case of above prima facie material. The parameters as laid down in ***Harjit Singh's*** case (*supra*) are, thus, not fulfilled as has been rightly observed by the learned Sessions Judge, Faridkot.

22 Taking into account the entire discussion as above, I find no merit in the present revision. As such, the same is dismissed.

January 31, 2023

sarita

(DEEPAK GUPTA)
JUDGE

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