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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-26998-2023(O&M)****Date of decision: July 07, 2023**

Naresh Kumar

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ajay Ghangas, Advocate for petitioner.

Ms. Svaneel Jaswal, Additional AG, Haryana.

ARUN MONGA, J. (ORAL)

Challenge herein is to an order dated 08.05.2023 (Annexure P-5) passed by learned Additional Sessions Judge, Panipat, whereby order dated 08.09.2022 (Annexure P-4) passed by learned trial Court vide which respondents No.2 and 3, namely, Amit and Ravi were summoned to face trial on an application under Section 319 Cr. P.C., was set aside.

2. Per prosecution version, on 08.05.2020 at about 7:00 p.m., when petitioner reached his house on tractor, Surinder, Sudhir, Monu, Parveen, Joginder, Amit and Ravi (respondents No.2 and 3 herein) were standing in front of their house and tried to stop the petitioner and abused him. Petitioner silently parked his tractor in the house. Meanwhile, all accused came inside the house of the petitioner. Surinder armed with iron road, Sudhir armed with handle of spade, Monu armed with brick, Joginder armed with 'lathi', Parveen armed with wooden club of scale and respondents Amit and Ravi armed with wooden club gave injuries to petitioner. Surinder gave iron blow on the head of Basanti, Joginder gave 'lathi' blow on the waist of Basanti, followed by brick blow given by Monu on the face of petitioner and teeth of the petitioner were broken. Parveen gave blow

with handle of spade on the shoulder of petitioner. Amit and Ravi gave wooden club blows on the waist and hips of Risha. Hearing this, Munish, Zile Singh and Balwan rescued the injured and went away threatening to kill them. An FIR under Section 323, 452, 188, 506, 148/149 IPC was registered in this regard on 09.05.2020.

3. Learned counsel for the petitioner submits that respondents No.2 and 3 were wrongly found innocent during investigation. Petitioner thus moved an application under Section 319 Cr. P.C. before learned trial Court for summoning aforesaid respondents. Learned trial Court vide order dated 08.09.2022 (Annexure P-4), rightly summoned them as additional accused to face the trial. Aggrieved, respondents No.2 and 3 challenged the said order before learned Additional Sessions Judge, Panipat.

4. However, vide impugned order dated 08.05.2023 (Annexure P-5), learned Additional Sessions Judge, allowed their revision and set aside the well-reasoned order passed by learned trial Court, even though there is/ was sufficient material on record to show complicity of aforesaid respondents No.2 and 3.

5. I have heard learned counsel for petitioner and have gone through the record.

6. No doubt, Section 319 of the Cr. P.C. allows a court to add any person, who is not an accused before the court, as an accused in an ongoing trial if it appears from the evidence that such person has committed an offense. However, exercise of said power is governed by certain principles, which, *inter alia*, are as below:

- i. Prima facie evidence: The court must have prima facie evidence against the person sought to be added as an accused, i.e. some material on record which, if unrebutted, could lead to the conclusion that the person has committed the offense.

- ii. Connection to the offense: The court must find a clear connection between the person sought to be added and the offense. This connection could be established through witness statements, documentary evidence, or any other relevant material that links the person to the commission of the offense.
- iii. Judicial discretion: The power conferred under Section 319 is discretionary and should be exercised judiciously by the court. The court must consider all the facts and circumstances of the case and exercise its discretion based on sound judicial principles.
- iv. Fair opportunity: The person sought to be added as an accused should be given a fair opportunity to present their case and defend themselves against the charges.
- v. Sufficiency of evidence: The court should assess the sufficiency of evidence against the person sought to be added. The evidence should be substantial and reliable enough to create a strong probability of the person's involvement in the offense.
- vi. Stage of trial: The court can exercise its power under Section 319 at any stage of the trial, whether it is during the inquiry, trial, or even after the judgment has been pronounced. However, the power should be exercised cautiously, especially when the trial is at an advanced stage, to ensure fairness and avoid prejudice.

Aforesaid principles ensure that the power under Section 319 is used judiciously and in accordance with the principles of natural justice, while allowing the court to effectively deal with situations where additional persons are found to be involved in the commission of an offense.

7. Reference may also be had to Constitution Bench judgment of Apex Court in **Hardeep Singh versus State of Punjab and others**¹. Scope of section 319 Cr.P.C. for the purpose of summoning additional accused was considered therein and five questions were framed to enunciate the broad principles. Supreme Court has addressed various questions framed by it, as under:

“110. We accordingly sum up our conclusions as follows:

Question Nos. 1 & III

Q.I What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused? Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of

cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Q. IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No. V

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh. The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove.”

8. In the present case, learned Additional Sessions Judge, Panipat, while allowing the revision of respondents No.2 and 3 filed against order dated 08.09.2022 passed by learned trial Court for summoning them to face trial as additional accused, has rightly observed in para-5 thereof, which reads as under:

“5. It is very much evident from the perusal of statement of respondent No.2, Ex. PW-1/A that the allegations against the revisionists are that they gave injuries with handles of spade to Risha, daughter of the respondent No.2. As far as the allegations of respondent No.2 against the revisionists in the complaint Ex.PW-1/A are concerned, the same were investigated by the police and the revisionists were found innocent. There is no fresh evidence on the file except the statement of PW-1 which is reiteration of complaint Ex.PW-1/A which has already been investigated by the police. The learned

Trial Court committed a grave error by holding that there is more than prima facie case made out against the revisionists to summon them. The learned Trial Court relied upon the statement under Section 161 of Cr. P.C. allegedly given by Risha as well as the medico legal report of Risha whereas the fact of the matter is that Risha as well as the doctor who prepared medico legal report are still to be examined by the prosecution. Strangely enough, the learned Trial Court observed in the order that injuries on the body of Risha are proved by the MLR whereas the doctor who prepared MLR is still to appear in the witness box. The learned Trial Court passed the order under Section 319 of Cr. P.C. mechanically by giving the reference of Hon'ble Supreme Court of India in Hardeep Singh v. State of Punjab and others, 2014 (1) RCR (Criminal) 623 whereas it failed to understand the crux of the law laid down by the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India held that there should be a case which is more than a prima facie case and less than of conviction made out against the person who is sought to be summoned under Section 319 of Cr. P.C. It is further held that the powers under Section 319 of Cr. P.C. should be used very sparingly and only when there is some evidence against such a person from which it appears that he is guilty of offence. It is also held that the additional accused cannot be summoned by the Court only on the basis of prima facie evidence. There must be some fresh material before the Court to summon the accused as an additional accused. This parameter has certainly not been followed by the learned Trial Court. The sole statement of complainant which is reproduction of complaint and has already been investigated by the police cannot be considered to establish more than prima facie case against the revisionists. The Hon'ble Punjab and Haryana High Court held in Daljeet Singh v. State of Punjab, 2016 (5) RCR (Criminal) 902, that where there is no fresh incriminating material to summon the accused, the accused cannot be summoned merely on the ground that the petitioner has reiterated his version of the complaint. In the present case, there is no fresh material to summon the revisionists as additional accused. The respondent No.2 has simply reiterated the contents of complaint which has already been investigated by the police. Therefore, the application under Section 319 of Cr. P.C. filed by the respondent No.2 has wrongly been allowed by the learned Trial Court. The findings of the learned Trial Court are illegal and without any substance and liable to be set aside. Therefore, the revision filed by the revisionists is allowed and the order dated 08.09.2022 passed by the learned Trial Court is set aside. Copy of this order along-with Trial Court record be returned. Revision file be consigned to the records after due compliance."

9. Considering the facts and circumstances of the current case and having gone through the order under challenge, I believe that the trial court has passed an order that is both fair and lawful. The court has provided adequate

justification for its decision, including a thorough discussion of applicable legal precedents. As such, there is no illegality or irregularity in the impugned order.

- 10. As an upshot, the instant revision lacks merits and is dismissed.
- 11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 07 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No