

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-5944-2018

Date of Decision: 17.01.2023

Harbir Singh & Ors.

... Petitioners

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. SPS Sidhu, Advocate and
Mr.JPS Smagh, Advocate for the petitioners

Mr. Mohit Chaudhary, AAG Punjab

Sandeep Moudgil, J.

The petitioners, *inter alia*, seek quashing of the order dated 01.12.2017 (Annexure P8) passed by Addl. Sessions Judge, Ferozepur vide which the petitioners have been summoned as additional accused to face trial in case FIR No.67 dated 30.04.2015 under Sections 325/323/506/34 IPC registered at Police Station Kulgarhi, District Ferozepur (Annexure P1).

An FIR was lodged by complainant Balkar Singh son of Joginder Singh alleging that he was running the business of a commission agent in the Grain Market of village Rukna Begu. On 29.04.2015 at about 06.30 PM, he was present at his shop, namely, Sandhu Trading Company, Rukna Begu and they were loading a truck bearing No.RJ-13GA-9091 with the wheat bags. Accused persons, namely, (i) Lakhwinder Singh armed with a Karahi, (ii) Mehtab Singh armed with a Dang, and (iii) Rajbir Singh @ Beera son of Jasvir Singh armed with a 315 bore rifle along with 3/4 unidentified persons armed with sticks came there. Rajbir Singh @ Beera raised *lalkara* to teach a lesson for loading of the truck with the wheat bags upon which the

complainant tried to stop him but Rajbir Singh fired a shot at him with 315 bore rifle but the complainant immediately sat down. The shot crossed from above his head, or else it was alleged that the said shot would have hit the complainant. Thereafter, Mehtab Singh gave stick blows to him hitting at his right shoulder and wrist joint. Lakhwinder Singh gave blows with his Karahi at his right arm and wrist joint. He raised hue and cry. Surjit Singh son of Mohinder Singh, resident of Bajidpur, who was present there saved him from the clutches of the accused persons. Thereafter, all the accused went away from there giving threats to his life, who had inflicted injuries upon him with common intention. The complainant was moved to Civil Hospital, Ferozepur, for treatment.

During the investigation, complainant Balkar Singh gave a supplementary statement on 30.04.2015 to the effect that at the time of the occurrence, he was nervous and as such, he could not name the unidentified persons and now he can identify them to be (i) Harbir Singh son of Jasvir Singh, (ii) Karanvir Singh son of Nishan Singh, and (iii) Varinder Singh son of Balraj Singh and who had instigated the other accused persons and even slapped the driver of the truck.

The police filed challan only against accused Lakhwinder Singh and Mehtab Singh, whereas petitioners No.1 to 4, namely, Harbir Singh, Rajbir Singh, Karanvir Singh and Varinder Singh were not challaned and were kept in column No.2 of the report under Section 173 of Cr.PC. and only charges against Lakhwinder Singh and Mehtab Singh were framed on 26.08.2015 for offences punishable under Sections 325, 323 & 506 read with Section 34 of IPC. The cross-version of this case against the complainant and others for an

offence punishable under Section 307 of IPC was committed and the present case being an off-shoot of the same occurrence, it was also committed for trial along with the cross-version vide order dated 13.08.2015 passed by JMIC, Ferozepur.

The complainant Balkar Singh (PW1) fully supported the allegations made in the FIR as well as his statement Ex.P1 and supplementary statement Ex.P2. Accused Rajbir Singh was duly named in the FIR being armed with a 315 bore rifle, who fired a shot with it. The other three accused namely Harbir Singh, Karanvir Singh and Varinder Singh have been duly mentioned in the supplementary statement Ex.P2 as well as they have been named by the complainant in his evidence as PW1. A specific role in the occurrence has been attributed to them.

Learned counsel for the petitioners contended that the way the complainant did not name the petitioners in the FIR and subsequently on the same day, he identifies and names the petitioners to be involved in the occurrence shows that the complainant has mala fide intention towards the petitioners. Had the petitioners been actually present at the relevant time of occurrence, the complainant would have instantly disclosed the names of the petitioners since petitioner No.3 had been selling crops at the commission agency of the complainant. Thus, it is clear that the petitioners have been falsely implicated for exert pressure for entering into compromise in the cross-case.

It is further vehemently urged that the petitioners were found to be innocent and placed in column No.2 of the report under Section 173 CrPC filed by the police after conducting the investigation in the matter, which

strengths the case of the petitioners. Further no role much less specific and grave, has been attributed to the petitioners.

Learned counsel for the petitioner submitted that the trial court has wrongly held that since the allegations have been supported by evidence of PW1, there are sufficient grounds to summon the petitioners to face a joint trial in this case along with other accused namely Lakhwinder Singh and Mehtab Singh and has wrongly allowed the application under Section 319 Cr.PC.

On the other hand, learned State counsel submits that the trial court order is based on evidence and law as the complainant himself has deposed that the petitioners were involved in the said occurrence and moreover, the complainant has attributed role to the petitioners. As such, the petitioners have been rightly summoned to face trial.

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

The sole test to examine and test the impugned order would be suffice if considered within the four corners of the decision in ***Hardeep Singh vs. State of Punjab, (2014) 3 SCC 92***, wherein the Constitution Bench of the Supreme Court while illuminating the scope of Section 319 Cr.PC, laid down that:-

“57. Thus, the application of the provisions of Section 319 CrPC, at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 CrPC can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to herein above, adding a person as an accused, whose name has been mentioned in

Column 2 of the chargesheet or any other person who might be an accomplice.”

xxxx xxxx xxxx

“105. Power under Section 319 CrPC is a discretionary and an extraordinary 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.

106. 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 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused.”

In **Hardeep Singh** (supra), the Supreme Court eloquently held that the word “evidence” in Section 319 CrPC has to be broadly understood and thus materials which have come before the Court, in course of enquiry, can be used for (i) corroboration of evidence recorded by Court after commencement

of trial; (ii) for exercise of power under Section 319 Cr.P.C.; and (iii) also to add an accused whose name is shown in column no.2 of the chargesheet.

In ***Sukhpal Singh Khaira vs. The State of Punjab, (2023) 1 SCC 289***, the Supreme Court succinctly explained the powers bestowed on the Court under Section 319 CrPC and ruled that:-

“15. At the outset, having noted the provision, it is amply clear that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.”

The Constitution Bench refreshed the guidelines which, the competent court, must follow while exercising powers under Section 319 CrPC and further ruled that:-

(i) if the competent court finds evidence or if application under Section 319 Cr.P.C. is filed, regarding involvement of any other person in committing the offence based on evidence “recorded at any stage in the trial” before passing of the order on acquittal or sentence, it shall pause the trial at that stage and the Court shall proceed to decide the fate of the application under Section 319 Cr.P.C.;

(ii) if the Court decides to summon an accused under Section 319 Cr.P.C., such summoning order shall be passed before proceeding further with the trial in the main case and depending upon the stage at which the order is passed, the Trial Court shall apply its

mind to the fact as to whether such summoned accused is to be tried along with other accused or separately; and

(iii) if the power under Section 319 Cr.P.C. is not invoked or exercised in the main trial till its conclusion and if there is a split-up case, such power can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the splitup (bifurcated trial).

After analyzing the *dicta* of the Constitution Benches in **Hardeep Singh** (supra) and **Sukhpal Singh Khaira** (supra), the Supreme Court in **Juhru v. Karim, 2023 SCC OnLine SC 171**, unequivocally held that:-

“17. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima facie case is sine qua non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material is, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked.”

It, thus, comes out that the power of summoning under Section 319 CrPC is not to be exercised in a routine manner and the existence of more than a *prima facie* case is *sine qua non* to summon an additional accused and with a view to prevent the frequent misuse of power to summon additional

accused, ordinarily, the Court should discourage itself from summoning the person, at the very threshold of the trial, and must evaluate such material which has to be testified vis-à-vis the material against the accused who is already facing trial. In the absence of any credible evidence, the power under Section 319 CrPC, ought not to be invoked.

On perusal of the FIR coupled with the supplementary statement suffered by the complainant, it is clear that the complainant has attributed that the petitioner Rajbir Singh @ Beera was armed with 315 bore rifle which missed its target i.e. the complainant. The other co-accused/petitioners were hand-in-glove and were *prima facie* found to be involved in the occurrence by the trial court. That being so, the order of trial court cannot be said to be illegal but is rather based on such evidence which raises strong probability of their conviction while summoning the petitioners. Besides, the pendency of cross-case against the complainant filed by the petitioners also shows that the parties to the lis are entangled in past dispute which fortifies the involvement of the petitioners in the occurrence and the same being a matter of trial, this Court restrains itself from expressing any opinion on merits.

For the reasons mentioned above, this Court does not find any ground to interfere with the order passed by the trial court summoning the petitioners to face trial in FIR (Annexure P1).

Accordingly, the present petition is dismissed.

17.01.2023

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No