

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

CRR No.1421 of 2023(O&M)

Date of Decision : 08.08.2023

Subhash Chander

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Piyush Sharma, Advocate
for the petitioner.

Mr. Amit Shukla, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J.

Petitioner is in revision impugning the order dated 22nd of February, 2023 passed by Additional Sessions Judge, Fazilka whereby the petitioner along with Arun Kumar son of Mahavir Parshad and Naresh son of Dungar Ram have been summoned as additional accused to face trial in FIR No.56, dated 23rd of March, 2019 by invoking Section 319 Cr.P.C.

2. FIR in the present case was registered on the statement made by Dilbagh Singh son of Kuldeep Singh which reads as under :

“Stated that I am a resident of the above mentioned address and we are 2 brothers and 2 sisters and all are unmarried. The name of my younger brother is Jugraj Singh who is 20 years old, my sister Pritpal Kaur and Ramandeep Kaur have completed their studies and now do household work but my younger brother Jugraj Singh was pursuing his studies in Guru Nanak College,

Ferozepur. The whole of our family is having 16 Killa land in village Chuhri wala Chishti and we use to give the whole of the land on lease but I drive my own truck (ghora-trolla). Yesterday on 22/03/2019 we all were present in our house then it was about 2 of the day, Gora Singh son of Rashpal Singh Jatt Sikh resident of Kanshi Ram Colony Fazilka and along with him Mandeep Singh@ Pipa who are friends of my brother and we the whole family know them, had come on bullet motorcycle then Gora Singh told me that they want to take Jugraj Singh along with them than I asked about the reason then they told that Harbans Singh son of Rulia Singh caste Rai Sikh resident of Muthian Wali who does work of selling sand and Gora Singh also does work of selling sand, Gora Singh said that Harbans Singh use to confiscate our trolla of sand therefore we need to talk to him. Then I asked them that how my brother Jugraj Singh is required in this matter but my brother Jugraj Singh went along with them being Gora Singh's friend. Being suspicious I along with my father Kuldeep Singh went behind them on our motorcycle **when we reached near the departmental shop of Indersen situated at Muthian Wali then Harbans Singh son of Rulia Singh armed with iron rod and Arun Kumar son of Mahavir Parshad armed with kirpan and Subash Chander son of Balram armed with staff, Naresh son of Dungar Ram armed with kirpan along with 6-7 unknown person who were having staffs in their hand but there and in my and my father's presence the above said Harbans Singh gave iron rod blow on the head of my brother Jugraj Singh due to which my brother fell on the ground then while lying on the ground Arun Kumar gave kirpan blow on the right-hand's wrist of my brother and the above said Subash Chander gave staff blow on the right thigh of my brother and the above said Naresh gave kirpan blow on the left thigh of my brother and Subash Chander gave staff blow on my brother but my brother took a turn and the blow landed on his back and the unknown persons who were armed with staffs did not let us**

go near to my brother Jugraj Singh to save him then I and my father raised alarm aloud and on hearing the alarm the residents of village Muthian Wali started gathering there therefore the above said accused persons escaped from the spot with their respective weapons.”

3. After investigation report under Section 173(2) Cr.P.C. was filed by the Investigating Agency whereby the petitioner along with Arun Kumar and Naresh were declared innocent and only Harbans Singh was challaned. During trial the complainant appeared as PW-1 and reiterated the version as recorded in the FIR. Prosecution filed present application under Section 319 Cr.P.C. which stands allowed by the Trial Court.

4. Counsel for the petitioner while assailing the impugned order has argued that as per law laid down by the Constitution Bench in '**Hardeep Singh vs. State of Punjab**', **2014 (1) R.C.R. (Criminal) 623** the power under Section 319 Cr.P.C. has to be used sparingly. He submits that PW-1 has not brought any new evidence on record but has only reiterated the earlier statement made to the police. Police has already investigated the matter from all aspects and given clean chit to the petitioner yet the Trial Court without considering the aforesaid aspects has passed the impugned order which as per him does not satisfy the test as laid down in Hardeep Singh's case (supra).

5. I have heard counsel for the parties and have carefully

gone through records of the case.

6. The complainant claims to be an eye-witness and has specifically accused the petitioner of having caused injury on his right thigh. Post-mortem report of the deceased specifies the injuries on the person of the deceased as under :

Examination of External Injuries			
Sr. No.	Injuries	Marked	Injury Number
1	LACERATED WOUND OF SIZE 5 X 3cm OVER RIGHT FRONTO-PARIETAL REGION OF HEAD. ON EXPLORATION RIGHT FRONTO-TEMPORO PARIETAL SDH WITH MULTIPLE CONTIUSIONS OF BRAIN SURFACE	Yes	1
2	BRUISE OF SIZE 4 X 3cm PRESENT ON MIDDLE 1/3 rd OF RIGHT THIGH ON ANTERIOR SIDE. ON EXPLORATION UNDERLYING RIGHT FEMUR NORMAL	Yes	2

7. The complainant has reiterated the version given in the FIR which *prima facie* seems to be corroborated by the medical evidence on record. Trite it is that at the time of exercising power under Section 319 Cr.P.C. to summon the additional accused the satisfaction to be recorded by the Courts is the same which has to be recorded at the time of framing of Charge. Thus, at this stage, the Court is required to formulate an opinion as to whether the evidence on record is sufficient to prove the offence against the additional accused without going into legality of such material. Trial Court while exercising jurisdiction under Section 319 Cr.P.C. observed as under :

“7. Perusal of file reveals that on account of such version put forth by complainant Dilbagh Singh from the very inception, the FIR was registered only against accused Harbans Singh, Arun

Kumar, Subhash Chander and Naresh in addition to seven unknown persons. It was on account of an inquiry having been conducted by SSP Fazilka that proposed accused Gurpreet Singh @ Gora and Mandeep Singh @ Peepa were exonerated and declared innocent. In view of such material on file, sufficient material is there on file to summon Arun Kumar, Subhash Chander and Naresh as additional accused in view of specific allegations and overt act attributed to them by the complainant from the very inception whereas, such material is absolutely not sufficient to justify invoking jurisdiction by this Court under Section 319 Cr.PC to summon Inder Sen, Gurpreet Singh @ Gora and Mandeep Singh @ Peepa as additional accused.

8. Resultantly, in view of the detailed discussion made in the preceding paras, this application stands partly allowed. This application stands dismissed so far as it relates to the summoning of proposed accused Inder Sen, Gurpreet Singh @ Gora and Mandeep Singh @ Peepa however, this application stands allowed so far as it relates to the summoning of accused Arun Kumar son of Mahavir Parshad, Subhash Chander son of Balram and Naresh son of Dungar Ram all residents of village Muthian Wala P.S. Sadar Fazilka as additional accused. Hence, these accused are hereby ordered to be summoned as additional accused under Section 319 Cr.PC to face trial with accused Harbans Singh who is already facing trial before this court.”

8. In view of above, this Court does not find that the Trial Court erred in summoning the petitioner as an additional accused invoking Section 319 Cr.P.C. Thus, there is no ground to interfere in the impugned order. Resultantly, the present revision petition is dismissed.

9. Needless to say anything observed herein shall not be

construed as an expression of opinion on the merits of the case as the observations have been made only and purely for deciding the present revision.

August 08, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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