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

CRM-M-34241-2021 (O&M)

Decided on : 28.02.2023

Darbara Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Harmanjit Singh Jugait, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

CRM-9763-2023

Application is allowed as prayed for and Annexure P-13 is taken on record subject to all just exceptions.

Main case

The petitioner has sought to invoke the inherent jurisdiction of this Court under Section 482 Cr.PC for quashing of the order dated 04.10.2017 passed by learned JMIC, Rajpura (Annexure P-10) and order dated 25.02.2021 passed by learned Addl. Sessions Judge, Patiala (Annexure P-11) vide which an application filed by him under Section 319 Cr.PC was dismissed.

Learned counsel for the petitioner submits that despite respondent No.2 being categorically named as well as attributed a role in the crime in question, he had been erroneously found innocent by the

investigating agency and placed in Column No.2. Learned counsel still further submits that when the petitioner stepped into the witness box as PW-1, he reiterated all the allegations not only against all the accused, who were already facing trial but even against respondent No.2. However, the trial Court as well as the Revisional Court erred in not appreciating the evidence adduced, even though it clearly indicated his involvement in the crime. Learned counsel also argued that since the occurrence in question took place due to a dispute between the petitioner and respondent No.2, therefore, there were sufficient grounds for summoning respondent No.2 under Section 319 Cr.PC to face trial.

Heard learned counsel and perused the relevant material on record including the FIR No.77 dated 18.09.2016 under Sections 323, 341, 506, 201 and 34 IPC (Annexure P-7) registered at Police Station Sadar Rajpura as well as the deposition of the material witnesses.

A perusal of the FIR in question reveals that only the presence of accused Mohan Singh, Girdev Kaur and Kamaljit Kaur was shown at the time of alleged occurrence and specific roles had been attributed to them only. The complainant had nowhere even by way of a whisper alleged that respondent No.2 was present at the spot at the time of alleged occurrence. The contention of the learned counsel that it was on account of a dispute between respondent No.2 and the petitioner that the occurrence in question had taken place, would not be sufficient ground to summon respondent No.2 to face trial as an additional accused.

Before proceeding further, it would be apposite to reproduce Section 319 of the Cr.P.C. which deals with powers to proceed against other

persons appearing to be guilty of offence and reads as under:-

“319. *Power to proceed against other persons appearing to be guilty of offence.*

(i) *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.*

(ii) *Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.*

(iii) *Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.*

(iv) *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.”

On a bare reading of the above provisions of Section 319 Cr.P.C., there can be no doubt, that a duty is cast upon the Court to bring all such persons who prima facie appear to have committed an offence, to justice. In other words, the object and purpose of Section 319 Cr.P.C. is to ensure that any one who prima facie appears to be guilty on the basis of evidence led does not escape trial in relation to that guilt including any person who may have also been dropped by the police during investigation and declared innocent.

For summoning of a person as an additional accused under Section 319 Cr.P.C., the Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab, (Constitution Bench) : 2014(3) SCC 92***, while dealing with the scope of Section 319 Cr.P.C., has observed as under : -

“98. 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.

99. 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. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused.”

Adverting to the case in hand, a perusal of the allegations levelled in the FIR reveal that only a vague apprehension has been raised by the complainant that on account of some malicious rumours spread by respondent No.2, the occurrence in question had taken place. This Court has no hesitation to observe that this certainly cannot be a ground to connect respondent No.2 with the crime in question and summon him under Section 319 Cr.PC to face trial as an additional accused. No doubt, the petitioner did name respondent No.2 in the FIR in question, however, a perusal of the contents of the FIR as well as the deposition of the petitioner, reveals that no specific role whatsoever much less any injury was attributed to him in the occurrence in question.

As a sequel to the above, in the absence of any strong and cogent evidence appearing against respondent No.2, this Court does not find any error in the impugned order, which would warrant the interference of this Court. Accordingly, the present petition stands dismissed.

However, anything observed hereinabove shall not be taken to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

28.02.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No