

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

108 - CRR-1505-2022

Date of Decision: 10.01.2023

Lakhwinder Singh

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. MS Kathuria, Advocate for the petitioner

Sandeep Moudgil, J.

This criminal revision petition has been preferred by the petitioner, *inter alia*, seeking to set aside the order dated 18.05.2022 passed by Addl. Sessions Judge, Karnal, vide which the trial court has dismissed the application under Section 319 CrPC filed by the petitioner for summoning respondents No.2 & 3 as additional accused to face trial in case FIR No.99 dated 14.03.2020 under Sections 302/323/341/34 IPC, registered at Police Station Taraori, District Karnal.

The facts of the present case, as emanating from the FIR, are that complainant Lakhwinder Singh has two children, a daughter and a son younger to her, namely, Apsi @ Happy. Kulwinder Singh accused leveled allegations against Apsi @ Happy of molestation of his niece around a year ago which issue was sorted out in a Panchayat. However, accused Kulwinder Singh and his family having nurtured grudge against Apsi @ Happy, on 13.03.2020 at about 07:00 P.M., Apsi @ Happy along with his mother Harvinder Kaur and complainant's nephew, namely, Gurpreet Singh had proceeded to the shop of Dr.Malkeet Singh on a motorcycle bearing registration No.HR-05-BC-8967 to get medicine for his mother. The accused

persons were standing near the Sambhi turning point with lathi, dandas, and iron pipes. They blocked Apsi @ Happy's motorcycle path and dragged him off the bike. Balkar Singh assaulted him on his chest with a binda while Kulwinder Singh hit him on his back with a binda. Karnail Singh hit him on his chest with a binda, whereas Gurkeet Singh @ Gora hit him on his chest, legs, and waist with the iron pipe. All the accused further hit him wherever possible. When Harvinder Kaur and Gurpreet Singh came to his rescue, they were also given beatings. On raising the alarm, all the assailants fled from the spot with their respective weapons. Apsy @ Happy collapsed on the spot and was rushed to Nilokheri Hospital. But, he was referred to Karnal due to severe multiple injuries and thus was admitted to Amritdhara Hospital Karnal. On 14.03.2020, Apsy @ Happy succumbed to his injuries. Resultantly, the above-cited FIR No.99 dated 14.03.2020 was registered in which the names of the accused persons including respondents No.2&3 was mentioned along with specific role attributed to them.

Aggrieved by the action of the police authorities in declaring respondents No.2 & 3 as innocent, the petitioner filed application under Section 319 CrPC for summoning respondents No.2 & 3 as additional accused.

The respondents No.2 & 3 filed their reply (Annexure P4) in the application for summoning, before the trial court wherein it was stated that in an enquiry conducted by SP, Karnal, the respondents No.2&3 were found innocent on the basis of enquiries from the villagers and CCTV footage of house of Balkar Singh, Angrez Singh and Avtar Singh.

Learned counsel for the petitioner contended that the petitioner-complainant and his wife both were examined as PW2 and PW1, respectively implicating all the accused persons including respondents No.2 & 3 attributing their role specifically. That being so, the police did not file challan against respondents No.2&3 as they were declared innocent. Reliance has been placed on **Rampal Singh & Ors. vs. State of UP & Anr. 2009(2) RCR (CrL) 131.**

It is averred that the trial court did not appreciate the important aspect that the police authorities have failed to give reasons in their report under Section 173 CrPC for declaring respondents No.2 & 3 as innocent.

Reliance has been placed on the judgments of the Hon'ble Supreme Court rendered in **Suman vs. State of Rajasthan 2009(4) RCR (CrL) 908**, **Sartaj Singh vs. State of Haryana 2021(2) RCR (CrL) 527**, **Manjeet Singh vs. State of Haryana 2021 (4) RCR (CrL) 25**, and **Hardeep Singh vs. State of Punjab, 2008(4) RCR (CrL) 947** to contend that the Court has to see whether there is *prima facie* case against the accused and if, from the evidence collected/produced in the course of any enquiry into or trial of offence, the Court is satisfied that such person has committed any offence, it can proceed under Section 319 CrPC, at any stage, before the final conclusion of the trial and that need not to wait till the cross-examination of the accused for the purpose of summoning.

Having given a thoughtful consideration to the submissions made by counsel for the petitioner, this Court is of the considered opinion that this petition ought to fail.

The power under Section 319 CrPC is discretionary power of the trial court, therefore, the discretion exercised by the trial court cannot be lightly interfered with, unless it is shown that the order refusing to implead the persons as accused has been made mechanically or it is arbitrary or perverse. The trial court, while refusing to take cognizance against the accused, is bound to take into account every aspect of the matter and the entire material placed before it and more particularly their chances of conviction of those persons who have been sought to be summoned as accused.

The issue relating to the power to be exercised under Section 319 of CrPC came up for consideration before a Constitutional Bench of the Hon'ble Supreme Court in **Hardeep Singh vs. State of Punjab (2014) 3 SCC 92** wherein the scope, procedure and at what stage, such power can be exercised was considered in detail. It was held that Section 319 CrPC springs out of the doctrine *judex damnatur cum nocens absoluitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC. It further held that it is the duty of the court to do justice by punishing the real culprit. Where the investigating agency, for any reason, does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC? The Constitutional Bench, while concurring with the views taken in **Dharam Pal Vs. State of Haryana reported in (2014) 3 SCC 306**, held that:-

“A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under [Section 319](#) Code of Criminal Procedure 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](#) Code of Criminal Procedure has to be complied with before he can be summoned afresh.”

The Hon’ble Supreme Court further held that :-

“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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power Under [Section 319](#) Code of Criminal Procedure In [Section 319](#) Code of Criminal Procedure 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](#) Code of Criminal Procedure to form any opinion as to the guilt of the accused.”

(emphasis applied)

In ***Babubhai Bhimabhai Bokhiria & Another Vs. State of Gujarat & Others., AIR 2014 SC 2228,*** the Hon’ble Supreme Court held that

a person can be summoned under Section 319 Cr.P.C as additional accused only where strong and cogent evidence occurs against him, from the evidence led before the court, and when no specific role is attributed to the proposed accused, then he cannot be summoned under section 319 CrPC. Moreover, when the allegations against the person are general in character, he cannot be summoned under Section 319 Cr.P.C to face trial.

Coming to the facts of this case, the deposition of petitioner (PW-2) reveals he was not an eye-witness to the alleged occurrence. In his cross-examination, he admitted that he had not seen the alleged occurrence because he was not present at the place of occurrence at the time of alleged incident as is evident from the statement under Section 161 CrPC of Harvinder Kaur PW1. Thus, the trial court rightly observed that the evidence of PW-2 is not sufficient to summon the proposed accused/respondents No.2 & 3. Moreover, a perusal of the final report under Section 173 of CrPC reveals that the Investigating Officer after thorough investigation found that the names of Balkar Singh, who is an old man, and his son Karnail Singh were falsely given. The investigating agency collected the CCTV footage of house of Balkar Singh, which also confirm the presence of Balkar Singh in his house at the time of incident in question.

It has come on record that the investigating agency and DSP, Karnal have considered the statement of Harvinder Kaur PW1 and same was found to be unreliable *qua* respondents No.2 & 3, in the light of CCTV footage as well as statements of Angrej Singh and Avtar Singh. The trial court rightly held that the CCTV footage in pen drive and statement of Angrej

Singh and Avtar Singh are to be given much weightage rather than considering/believing the examination-in-chief of the PW1 Harvinder Kaur.

The trial court further rightly held that the evidence of PW1 failed to qualify the test as laid in **Hardeep Singh's** case (supra) vide which it was held that 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 and that merely on the basis of reiteration of statement of such witness before Court, and unless there is some fresh evidence on record so as to impel the Court to summon proposed respondents No.2 & 3. The trial court did not find any cogent and convincing evidence on the file to summon respondents No.2 & 3.

In view of the above discussion and keeping in view the judgment of the Hon'ble Supreme Court in **Hardeep Singh's** case (supra) and **Babubhai Bhimabhai Bokhiria & Another's** case (supra) this Court is of the considered view that there is no infirmity, perversity and illegality for any interference with the order dated 18.05.2022 passed by the trial court and as such the present petition, is dismissed.

10.01.2023

V.Vishal

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

(Sandeep Moudgil)

Judge

Yes/No
Yes/No