

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

CRM-M No.31120 of 2022 (O&M)

Date of Decision:21.11.2023

Varinder Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ishan Gupta, Advocate
for the petitioner.

Ms. Madhu Sharma, AAG, Punjab.

Mr. Narinder Singh, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court under Section 482 Cr.P.C. for setting aside the order dated 04.07.2022 (Annexure P-6) passed by the learned Additional Sessions Judge, Sangrur in FIR case No.51 dated 13.05.2016 registered under Sections 306, 34 IPC at Police Station Amargarh, District Sangrur (now District Malerkotla) whereby the petitioner has been ordered to be summoned as an additional accused under Section 319 Cr.P.C.

2. In brief, the facts are that on 11.05.2016, respondent No.2-complainant made a complaint that on 13.03.2016, Vindi son of Buta Singh, Bagga son of Kartar, Dev Singh son of Bhajan Singh, Darshan Singh son of Bhajan Singh, Beant Singh son of Darshan Singh, Jasbir Singh son of Darshan Singh, Amritpal Singh son of Jagroop Singh residents of village Manvi, Tehsil Marlerkotla and three unidentified persons threw acid on the face of his son namely Dharminder Singh, who was handicapped and when Charanjit Singh son of Sukhdev Singh

came to his rescue, he was also beaten up and injuries were inflicted upon him. In this regard, an FIR was registered against the accused persons but no action was taken thereon. Face of his son was deformed in the said incident. On 10.05.2016 at 8.30 A.M., when Dharminder Singh and his paternal uncle (*chacha*) Jagdev Singh were standing outside their *abadi* land situated on village Jagowal road, Gurmail Singh son of Naranjan Singh, Santokh Singh son of Kaman Singh, Varinder Singh son of Gurmail Singh, Iqbal Singh son of Santokh Singh, residents of village Manvi Tehsil Malerkotla and one identified person came in their white colour car and teased Dharminder Singh by saying what had you been able to do with the persons, who disfigured your face by throwing acid. Santokh Singh and his son said that they had implicated you in a false case whereas Gurmail Singh and his son Varinder said to Dharminder Singh that you and your family should die of shame. Dharminder Singh and his paternal uncle narrated the whole incident to the complainant. Thereafter at 4 PM, Dharminder Singh went alone from house and when he did not return back till 7 PM, a search was carried on by various persons and when they reached to Hussainpure canal, his cycle, clothes and slipper were found there. The complainant stated that his son was instigated to commit suicide by Gurmail Singh, Santokh Singh, Iqbal Singh, Varinder Singh along with one unidentified person as they taunted and teased him in connivance with each other and therefore, legal action be taken against them. In pursuance of the complaint filed by the complainant, the FIR in question was registered in which the petitioner was ordered to be summoned to stand trial under Section 193 Cr.P.C. vide order dated 20.01.2017 passed by the Additional Sessions Judge, Sangrur, however, the said order was challenged before this Court in CRR No.1075 of 2017 and this Court vide order dated 24.11.2021 quashed the same, keeping it open to the public prosecutor concerned

to institute an application under Section 319 Cr.P.C for arraying the petitioner as an additional accused along with other accused, who were already facing trial. Thereafter, the complainant was examined during the course of trial as PW1 and the public prosecutor moved an application under Section 319 Cr.P.C. for summoning the petitioner as an additional accused, which has been allowed by the trial Court vide impugned order dated 24.11.2021. Hence, the present petition.

3. Learned counsel appearing for the petitioner assails the impugned order on the ground that on the day of incident i.e. 10.03.2016, the petitioner along with his maternal aunt (*masi*) had gone to PGI, Chandigarh in his car and in this regard, produced parking slip of car in PGI, Chandigarh, bills of medicine purchased from Royal Medical Store, PGI, Chandigarh and the CCTV footage of the said medical store. It is further contended that the investigating agency thoroughly investigated the matter and the petitioner was found innocent in the final report submitted under Section 173 Cr.P.C. Once the order dated 20.01.2017 passed by the Additional Sessions Judge, Sangrur under Section 193 Cr.P.C. vide which the petitioner was summoned as an additional accused was set aside by this Court, summoning of petitioner as an additional accused vide impugned order dated 04.07.2022 under Section 319 Cr.P.C. in the absence of any material to support the verbal/ocular version of the complainant is not sustainable in the eyes of law. In support of his arguments, he relies upon the judgment passed by the Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab and others 2014 (1) RCR (Criminal) 623*** and ***Michael Machado Vs. Central Bureau of Investigation 2000 (2) RCR (Criminal) 75***. Further reliance has been placed upon the judgment passed by the Hon'ble Supreme Court in ***Brijendra Singh Vs. State of Rajasthan 2017 (3) RCR (Criminal) 374*** to

contend that once the police after investigation found on the basis of documentary evidence that the person was away to a distant place on the day of occurrence and did not file charge sheet against him, the trial court cannot summon said person as accused on the basis of examination-in-chief of the complainant and his witness.

4. Per contra, learned counsel appearing for respondent No.2 at the very first instance has raised an objection qua maintainability of the instant petition under Section 482 Cr.P.C. against an interlocutory order passed by the trial Court under Section 319 Cr.P.C, as the remedy available to the aggrieved party was under Section 397/401 Cr.P.C. to file a revision petition. In support of his contention, he relies upon the judgment passed by the Hon'ble Supreme Court in ***Mohit alias Sonu and another Vs. State of U.P. and another 2013 (3) RCR (Criminal) 673.*** He further supports the impugned order by contending that this Court while setting aside the order dated 20.01.2017 passed by the Additional Sessions Judge, Sangrur under Section 193 Cr.P.C. had left it open to the public prosecutor to institute an application under Section 319 Cr.P.C. for arraying the petitioner as an accused along with the other co-accused, who were facing trial in respect of the FIR in question. It was in this background, the application was moved under Section 319 Cr.P.C. and the trial Court finding more than a *prima facie* case against the petitioner has rightly summoned him as an additional accused to face trial along with other co-accused.

5. I have heard learned counsel for the parties and perused the record the case with their able assistance as well as the case laws cited.

6. The objection raised by the counsel appearing for respondents No.2 to 6 qua maintainability of the instant petition is not sustainable, as a three Judge Bench of the Hon'ble Supreme Court while answering a reference made to it in

Prabhu Chawla Vs. State of Rajasthan and another 2016 (4) RCR (Criminal) 270 in view of conflicting decisions rendered in ***Dhariwal Tobacco Products Ltd. and others Vs. State of Maharashtra and another (2009) 2 SCC 370*** and ***Mohit alias Sonu and another Vs. State of Uttar Pradesh and another (2013) 7 SCC 789***, speaking through Justice Shiva Kirti Singh has held as under:-

“6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of High Court under Section 482 Cr.P.C. is unwarranted. We would simply reiterate that Section 482 begins with a non-obstante clause to state: “Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.” A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J. “abuse of the process of the Court or other extraordinary situation excites the court’s jurisdiction. The limitation is self-restraint, nothing more.” We venture to add a further reason in support. Since Section 397 Cr.P.C. is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 Cr.P.C. only to petty interlocutory orders! A situation wholly unwarranted and undesirable.

7. As a sequel, we are constrained to hold that the Division Bench, particularly in paragraph 28, in the case of Mohit alias Sonu and another (supra) in respect of inherent power of the High Court in Section 482 of the Cr.P.C. does not state the law correctly. We record our respectful disagreement.”

7. The case set up by the petitioner was that he was not available at the place of occurrence on 10.03.2016 as he went to PGI, Chandigarh along with his maternal aunt. He produced parking slip of his car at PGI Chandigarh bearing time 6.30 AM, bill regarding purchase of medicines from Royal Medical Store,

PGI, Chandigarh and the CD prepared from the footage of CCTV cameras installed at the said medical store in which he was seen to be present there on the day of occurrence. Even the mobile tower location of the mobile number of the petitioner was of PGI, Chandigarh. Moreover, in order to vouch for the veracity of the material placed by the petitioner, Head Constable Gurdip Singh went to PGI, Chandigarh on 24.05.2016 and recorded the statement of one Sagandeep Singh son of Iqbal Singh, who was working at the parking area of PGI, Chandigarh as well as Sahil, owner of the Royal Medical Store. An enquiry was also held to verify whether the petitioner was available in the village Manvi after 4.30 A.M. on 10.05.2016 and it was found that he was not in the village at the relevant point of time when the alleged incident had occurred. Therefore, in the opinion of this Court, summoning of the petitioner under Section 319 Cr.P.C. merely on the statement made by the complainant without taking into consideration documentary and other evidence during the course of investigation warrants interference by this Court. The trial Court was at least duty-bound to look into the material/evidence collected by the investigating agency, while forming *prima facie* opinion and to see as to whether much stronger evidence than mere possibility of complicity of the petitioner has come on record. The Hon'ble Supreme Court in ***Brijendra Singh's case*** (supra) has held that the trial Court cannot summon a person as accused on the basis of examination-in-chief of the complainant and his witness in case where the complainant lodged FIR against three persons in a murder case, who were found away to a distance place on day of occurrence on the basis of documents by the investigating agency.

8. The FIR is not supposed to be an encyclopedia of the entire events and cannot contain the minute details of the events. Mere statement of the complainant reiterating the contents of FIR/complaint not substantiated by any

credible material, cannot be a ground to invoke the discretionary and extraordinary power of this Court to summon an additional accused under Section 319 Cr.P.C. In the absence of any material suggesting existence of more than *prima facie* case available during the course of trial of an offence, courts ought to refrain themselves from exercising its discretionary and extraordinary power under Section 319 Cr.P.C. The Constitution Bench of the Hon'ble Supreme of India in ***Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92*** has held that the power under Section 319 Cr.P.C is a discretionary and an extraordinary power. It is to be exercised only on the basis of the material available before the Court during a trial and not because the Magistrate or the Sessions Judge is of the opinion that some other accused/person may also be guilty of committing that offence.

9. The trial Court must evaluate the material against the persons sought to be summoned and then adjudge whether such material, 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 material, the power under Section 319 Cr.P.C. ought not to be invoked. A two Judge Bench of the Hon'ble Supreme Court in ***Juhru and others Vs. Karim and another (2023) 5 SCC 406*** speaking through Justice Surya Kant, while relying upon ***Hardeep Singh's case*** (supra) has held as under:-

“16. It is, thus, manifested from a conjoint reading of the cited decision that power of summoning under Section 319 CrPC is not to be exercised routinely and the existence of more than 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 CrPC, 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, 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 CrPC ought not to be invoked.

10. In view of the aforesaid facts and circumstances, the impugned order dated 04.07.2022 is set aside and the instant petition stands allowed.

(HARPREET SINGH BRAR)
JUDGE

November 21, 2023
Pankaj*

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