

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

CRR No.2873 of 2018

Date of Decision: May 24, 2023

Bikram Saini @ Vicky @ Vikram & Anr. ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Ajay Pal Singh Rehan, Advocate for the petitioners.

Mr. Parneet Singh Pandher, AAG, Punjab.

Mr. Hardik Ahluwalia, Advocate with
Mr. A.S. Manaise, Advocate for respondent No.2.

DEEPAK GUPTA, J.(Oral)

This revision is directed against order dated 30.07.2018 passed by learned Additional Sessions Judge, Gurdaspur, allowing the revision of the prosecution, whereby the petitioners have been summoned under Section 319 Cr.P.C to face trial in case FIR No.30 dated 27.05.2012 registered at Police Station Behrampur, District Gurdaspur under Sections 324, 323, 452, 380, 427 IPC.

2. FIR was lodged on the statement of respondent No.2 – Joginder Singh making allegations against Ravi son of Gurdas, Vijay son of Mohan Lal, Rahul alias Papal son of Kamal Kishore, Akshay Kumar son of Vijay Kumar, Sanjeev Kumar son of Gurdas, Makhan son of Naresh Kumar, Rohni son of Santokh Raj and Vicky son of unknown, who with three unidentified persons, all armed with different kinds of weapons caused injuries to him (Joginder Singh) and his brother Yashpal

on 26.05.2012. It was also alleged that as both of them ran towards their house, these persons chased them and when his brother Satpal Singh came forward to rescue him, the assailants caused injuries to him also. It was further alleged that Vijay Saini w/o Kamal Kishore, Mamta Devi w/o Ravi Kumar, Vandana w/o Sanjiv Kumar, Bholi w/o Vijay Kumar and Bholi w/o Suresh Kumar started throwing brick bats into their houses and trespassed the same. They also allegedly committed theft of ₹17,000/- and some gold ornaments and further caused damage to the Haveli.

3. After necessary investigation, challan was filed only against three persons, namely, Kamal Kishore, Rahul Saini and Gaurav Saini alias Makhan; whereas rest of the persons were placed in column No.2 of the challan. Charge was framed against the challaned accused. Joginder Singh stepped into witness box as PW1 and reiterated the statement made before the Police. Prosecution then moved an application under Section 319 Cr.P.C to summon the remaining accused. Trial Court vide order dated 28.07.2017 partly allowed the application and ordered summoning of Ravi Kumar, Vijay Kumar, Akshay Kumar and Sanjiv Kumar, who had been attributed specific role. However, after noting that nothing had been attributed to Rohni, Vijay Saini, Mamta Devi, Vandana, Bholi wife of Vijay and Bholi wife of Suresh Kumar, the application under Section 319 Cr.P.C qua them was dismissed. Complainant filed revision against the said order. Learned Additional Sessions Judge, Gurdaspur vide impugned order dated 30.07.2018 partly allowed the same and ordered for summoning of Rohni son of Santokh Raj and Vicky @ Vikram to face trial as additional accused.

4. It is against the afore-said order that Rohni alias Parmjit and Vicky alias Bikram Saini, have now approached this Court. It is contended that examination-in-chief of PW1- respondent No.2 is a simple reiteration of the FIR version, which was investigated by the Investigating Agency. Nothing came on record to challan the petitioners and so learned Additional Sessions Judge, Gurdaspur erred in passing the impugned order as no specific role was attributed in the FIR to them and they had been found innocent. Prayer has been made for setting aside the impugned order.

5. Refuting the afore-said contentions, learned State Counsel has drawn attention towards the observations made by learned Additional Sessions Judge, as per which there was prima-facie material against Rohni and Vicky, who had participated in the crime along with other accused. Learned State Counsel also informed this Court that after passing of the impugned order, charges were framed and that out of 22 witnesses cited by the prosecution, 18 of them have already been examined.

6. I have considered the submissions of both the sides and have perused the record.

7. Section 319 Cr.P.C. reads as under:-

“319. Power to proceed against other persons appearing to be guilty of offence.—(1) 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.

(2) & (3) xxxxxxxxxxxx (not relevant)

(4) 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.”

8. The issue regarding the scope and extent of power of the Court to arraign any person as an accused during the course of inquiry or trial in exercise of the power under section 319 Cr.P.C. has been set at rest by a Constitutional Bench of Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab, 2014 (1) R.C.R. (Criminal) 623** followed by another pronouncement in **Babubhai Bhimabhai Bokhiria and Another Vs. State of Gujarat and others, 2014 (2) RCR (Criminal) (SC) 915.**

9. After reviewing various precedents, Hon'ble Apex Court summarized the legal position in **Hardeep Singh's case (cited supra)** in the following words:

"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.

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."

10. After referring to aforesaid authority of Constitutional Bench, Hon'ble Supreme Court held in **Babubhai Bhimabhai Bokhiria's case (cited supra)** as under:

"Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher."

Same view has been reiterated in **Shiv Prakash Mishra vs. State of Uttar Pradesh 2019 (5) RCR (Criminal) 946.**

11. In the light of legal position as aforesaid, when the factual matrix of this case is analysed, it is seen that it has specifically come in the deposition of PW1 – Joginder Singh – respondent No.2 that along with other assailants Rohni armed with datar and Vicky armed with sota had also come there. Though no specific injuries were attributed to any of them but it is clearly mentioned that as his brother Yashpal came forward to rescue him, all the accused (who included the two petitioners) with an intention to kill Yashpal, gave injuries to him. Learned Additional Sessions Judge also noticed in the impugned order that all the

accused including the petitioners had formed unlawful assembly and committed rioting as members of the unlawful assembly were having deadly weapons.

12. Based upon the afore-said evidence, it is held that learned Additional Sessions Judge, Gurdaspur did not commit any error in holding that there was a prima-facie case to summon the two accused Rohni son of Santokh Raj and Vicky alias Vikram i.e. the petitioners, and so rightly ordered their summoning.

13. No doubt, that at the time of considering an application under Section 319 Cr.P.C, it is required to be seen that there is more than a prima-facie case as is exercised at the time of framing of the charge but it should be short of satisfaction to the extent that evidence, if goes un rebutted would lead to conviction. In this case, the testimony of PW1 Joginder shows more than a prima-facie case revealing the participation of two petitioners in the crime.

14. Apart from this, as informed by the learned State Counsel, out of 22 witnesses cited by the prosecution, 18 have already been examined.

15. Having regard to all the afore-said reasons, the present petition is hereby dismissed.

May 24, 2023

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(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No