

CRR No. 3195-2018 (O&M)

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

CRR No. 3195-2018 (O&M)

Reserved On: 30.05.2023

Pronounced On: 1st SEPTEMBER, 2023

SATPAL

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashit Malik, Advocate
for the petitioner.

Mr. Gagandeep Singh Chhina, AAG, Haryana.

Mr. Pankaj Bali, Advocate
for respondent No.2.

SANDEEP MOUDGIL. J.

1. The challenge in the present criminal revision petition is to the order dated 24.08.2018 passed by the Additional Sessions Judge, Karnal whereby, vide which an application filed under Section 319 Cr.P.C. by the petitioner-Satpal-complainant for summoning respondents No.2 and 3 as additional accused to face trial in FIR No. 398, dated 09.10.2017, under Sections 323, 326, 307, 506 read with Section 34 of IPC, registered at Police Station Butana, District Karnal has been dismissed.

2. The factual matrix of the present case as narrated in the FIR is as under:-

“The present FIR was registered at the instance of Satpal alleging that about two months ago an altercation took place between the complainant and Master Subhash and Surjit but later on the matter was compromise between the parties. It is

alleged that on 05.10.2017, he along-with his wife and son Arvind was sitting in his house, meanwhile, Subhash, Lalit, Surjit and Sonu @ Pardeep armed with gandasis lathi came there and raised a lalkara that they got a chance to kill them. Immediately thereafter, Subhas gave a gandasi blow on the right side of the head of the son of the complainant, as a result thereof, he fell down and on hearing the noise, he and his wife came out. Then Subhash tried to gave another blow but he caught hold his hand and meanwhile Lalit, Sonu and Surjit gave a lathi blows to him and his wife as well as his son, who was lying on the ground. All the accused ran away from the spot after extending threats to them. An FIR was lodged under Sections 323, 324, 34 and 506 of IPC, against all the above named persons. After completion of investigation, only Pardeep Kumar @ Sonu and Surjit Singh were challaned by the police and the remaining persons i.e. Subhash and Lalit Kumar were found innocent and kept in column No.2.”

3. It is asserted on behalf of the petitioner that at the time of registration of FIR, it has been specifically stated by the petitioner-complainant that Subhash-respondent No.2 gave a gandassi blow on the right side of the head of his son namely Arvind, which is also corroborated by medical evidence. It is further asserted that respondent No.3 has also been specifically named in the FIR. The assertion is that as per the summary and NCCT Head report, Arvind suffered multiple fractures on his head and PW-2 Tarun Mahal, on the basis of NCCT Head report, has also opined that the injury on the head of Arvind is grievous and life threatening. Accordingly, a *prima-facie* case is made out against respondents No.2 and 3.

4. Mr. Gagandeep Singh Chhina, learned Assistant Advocate General, Haryana assisted by Mr. Pankaj Bali, learned Advocate for respondents No.2 and 3 has contended that after registration of FIR, a thorough investigation was conducted by Inspector Harvinder Singh, the then

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Station House Officer, Police Station Butana as well as by Shri Vivek Chaudhary, HPS, Deputy Superintendent of Police, Karnal. During investigation, it was found that both the accused Subhash-respondent No.2 and Lalit Kumar-respondent No.3 intervened to stop the fight and except that no over act has been attributed to them.

5. I have heard learned counsel for the parties and gone through the record.

6. Before proceeding with the matter, it is apposite to reproduce what has been contemplated in Section 319 CrPC, which reads as under:-

“....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.”

7. The Constitution Bench of the Supreme Court in **Hardeep Singh vs. State of Punjab, (2014) 3 SCC 92**, while illuminating the scope of Section 319 Cr.PC, laid down that:-

“57. Thus, the application of the provisions of Section 319 CrPC, at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 CrPC can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to herein above, adding a person as an accused, whose name has been mentioned in Column 2 of the chargesheet or any other person who might be an accomplice.”

xxxx xxxx xxxx

“105. Power under Section 319 CrPC is a discretionary and an extraordinary 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.

106. 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 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused.”

8. In **Hardeep Singh (supra)**, the Supreme Court eloquently held that the word “evidence” in Section 319 CrPC has to be broadly understood and thus materials which have come before the Court, in course of enquiry, can be used for (i) corroboration of evidence recorded by Court after commencement of trial; (ii) for exercise of power under Section 319 Cr.P.C.; and (iii) also to add an accused whose name is shown in column no.2 of the chargesheet. .

9. In **Sukhpal Singh Khaira vs. The State of Punjab, (2023) 1 SCC 289**, the Supreme Court succinctly explained the powers bestowed on the Court under Section 319 CrPC and ruled that:-

“15. At the outset, having noted the provision, it is amply clear that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.”

10. The Constitution Bench refreshed the guidelines which, the competent court, must follow while exercising powers under Section 319 CrPC and further ruled that:-

“(i) if the competent court finds evidence or if application under Section 319 Cr.P.C. is filed, regarding involvement of any other person in committing the offence based on evidence “recorded at any stage in the trial” before passing of the order on acquittal or sentence, it shall pause the trial at that stage and the Court shall proceed to decide the fate of the application under Section 319 Cr.P.C.;

(ii) if the Court decides to summon an accused under Section 319 Cr.P.C., such summoning order shall be passed before proceeding further with the trial in the main case and depending upon the stage at which the order is passed, the Trial Court shall apply its mind to the fact as to whether such summoned accused is to be tried along with other accused or separately; and

(iii) if the power under Section 319 Cr.P.C. is not invoked or exercised in the main trial till its conclusion and if there is a splitup case, such power can be invoked or exercised only if

there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the spiltup (bifurcated trial).”

11. After analyzing the *dicta* of the Constitution Benches in ***Hardeep Singh’s case (supra)*** and ***Sukhpal Singh Khaira’s case (supra)***, the Supreme Court in ***Juhru v. Karim, 2023 SCC OnLine SC 171***, unequivocally held that:-

“17. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a 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 Cr.P.C., 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 is, 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 Cr.P.C. ought not to be invoked.”

12. It, thus, comes out that the power of summoning under Section 319 CrPC is not to be exercised in a routine manner and the existence of more than a prima facie case is sine qua non to summon an additional accused and with a view to prevent the frequent misuse of power to summon, ordinarily, the Court should also discourage itself from summoning the person, at the very threshold of the trial, and must evaluate such material which has to be testified vis-à-vis the material against the accused who is

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already facing trial. In the absence of any credible evidence, the power under Section 319 CrPC, ought not to be invoked.

13. In the case in hand, the complainant has relied upon the testimony of PW-1, wherein, he has categorically mentioned the names of respondents No.2 and 3. Merely, the fact that the complainant alleged respondents No.2 and 3 to be assailants, solely on the lines of his initial version which stands belied and petitioners were found innocent in separate enquiries conducted twice by two different police officials of the rank of DSP.

14. This court cannot lose sight to the fact that the accused and complainant party belong to a same family, so it is improbable that respondent No.2-Subhash could have recorded the statement of wife of injured stating that these persons cannot be exonerated as their names have been mentioned earlier in the FIR.

15. As per the statement of PW-2 Tarun Mahal, the injury sustained was semi lunar in size and had the injuries been caused by sharp edged weapon, then injury would not be upon bone of injured in form of depressed fracture, rather it might have been in a form of sharp cut even over the bone of injured. Therefore, it can be easily inferred that the skull of the injured cannot be displaced by mere sharp edged injury.

16. In view of afore-said factual aspects and the case law discussed hereinabove, this Court does not find any merit in the present petitioner and the same is dismissed.

17. Hence, the present criminal revision petition is ordered to be dismissed.

1st SEPTEMBER, 2023
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No