

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

238

CRR-3698-2018

Date of decision: 03.07.2023

Kamlesh Devi and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Gautam Dutt, Advocate
for the petitioners.

Mr. Karan Sharma, DAG, Haryana.

Mr. Sunil Chadha, Sr. Advocate with
Mr. Saurav Kanojia, Advocate
for respondent No.2.

MANJARI NEHRU KAUL, J. (ORAL)

1. The instant revision petition has been filed challenging the order, dated 17.10.2018, passed by the Court of learned Additional Sessions Judge, Gurugram, in case SC/34 of 2018 titled as 'State Vs. Laxmi Narain etc.' arising out of FIR No.287 dated 22.09.2017 under Sections 148, 149, 302, 323, 452 and 506 of the IPC registered at Police Station Farrukh Nagar, Gurugram, vide which an application filed under Section 319 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') by the prosecution to summon the petitioners to face trial as additional accused was allowed.

2. Learned counsel appearing for the petitioners has argued with vehemence that the impugned order is patently illegal and thus deserves to be set aside as the Trial Court failed to appreciate that the petitioners had been declared innocent by the police after a detailed

investigation and thus rightly not challaned. It has been further submitted that the Trial Court also failed to take into account that respondent No.2 i.e. complainant Krishan Kumar, while stepping into the witness box as PW-4 had made material improvements qua the alleged role played by the petitioners inasmuch as in his deposition in the Court he stated that the petitioners had held the deceased by his hands and legs when the co-accused were inflicting injuries on his person, however, the FIR lodged by the complainant was totally silent qua the same.

3. Learned counsel has still further submitted that on the face of it, it is a case of false implication as it was a matter of record that relations between the parties were not cordial and there was a history of civil dispute between them. It has also been asserted by the learned counsel that both the doctors i.e. PW-1 Deepak Mathur and PW-3 Nitika Grover, in their testimony before the Trial Court deposed that the injuries sustained by the deceased were minor in nature and that the deceased was suffering from a chronic heart disease, hence, the possibility of the deceased dying due to natural causes could not be ruled out. Thus, learned counsel has argued that there was hardly any cogent evidence to summon the petitioners under Section 319 of the Cr.P.C. to face trial as additional accused.

4. Per contra, learned State counsel assisted by learned senior counsel for respondent No.2/complainant has vehemently opposed the prayer and submissions made by the counsel opposite. It has been urged that in the FIR, which was lodged without any delay, it had been specifically alleged by the complainant that all the accused, including

the petitioners after trespassing into his house, on the fateful day had launched an unprovoked attack on the complainant party. Not only had the petitioners held the deceased by his arms and legs when he was being inflicted injuries by the co-accused but it had also been alleged in the FIR that the complainant as well as 03 others from his family were also inflicted injuries by the petitioners, which in turn found support from the medical evidence on record.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. The Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab, (Constitution Bench) : 2014(3) SCC 92*** while dealing with the object and purpose behind Section 319 of the Cr.P.C. has held 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 unrebutted, 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."

7. Thus, it is evident that the object and purpose behind Section 319 of the Cr.P.C. is to ensure that no one who appears guilty escapes trial in relation to that guilt.

8. The contention of learned counsel for the petitioners that since the petitioners had been found innocent during investigation, the Trial Court had erred in summoning them under Section 319 of the Cr.P.c. is meritless. Merely because the investigating agency found the petitioners innocent would not be a ground to not summon them under Section 319 of the Cr.P.C. as it would defeat the very purpose behind the enactment of Section 319 of the Cr.P.C.

9. In the case in hand, the alleged occurrence took place on 22.09.2017 at about 11:30 A.M. inside the house of the deceased, when all the accused including the petitioners, suddenly barged into his house, armed with sticks. After trespassing into the house of the deceased, the accused hurled abuses at the complainant party and declared that the entire family would be eliminated. Soon thereafter co-accused Babu Lal, Ram Chander and Laxmi Narayan (already challaned) assaulted the deceased. A perusal of the FIR reveals that not only the presence of the petitioners along with the three aforementioned challaned accused finds mention therein but there were specific attributions qua the petitioners of having inflicted injuries on the person of the complainant and three of his family members. The 'material improvements' made by the complainant during his deposition before

the Trial Court, which the learned counsel for the petitioners has referred to, would not be of much consequence at this stage. No doubt the complainant while stepping into the witness box attributed specific roles to the petitioners of having incapacitated the deceased by holding him by his arms and legs, however, it a matter of record, as already noticed earlier that the petitioners were named by the complainant and their presence shown while lodging the FIR and still further injuries attributed to them on the person of the complainant and 02 others prima facie find due corroboration with their respective MLRs. It needs to be reiterated that an FIR is not an encyclopaedia which must contain every minute detail of the crime/alleged occurrence. The purported improvements made by the complainant during his deposition would be a matter to be appreciated by the Trial Court during trial. This Court, thus, has no hesitation in holding that cogent and sufficient material exists to summon the petitioners under Section 319 of the Cr.P.C. The impugned order comes across as being a well reasoned one which does not warrant any interference of this Court.

10. Accordingly, the instant petitions is hereby dismissed.

11. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

03.07.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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