

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

CRR-849 of 2018

Date of Decision:- 02.02.2023

Kuldeep Singh

....Petitioner

Vs.

State of Punjab & Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by:- Mr. Neeraj Jain, Advocate
for the petitioner.

Mr. M.S. Nagra, AAG Punjab.

Mr. A.P.S. Deol, Sr. Advocate with
Mr. Himmat Singh Deol, Advocate,
Mr. Navdeep Singh, Advocate and
Mr. Nalin Singh, Advocate
for respondent No.3.

KARAMJIT SINGH, J.

The present criminal revision petition has been filed by the petitioner against order dated 02.01.2018 passed by the Court of learned Additional Sessions Judge, Mansa whereby the application moved by the prosecution under Section 319 Cr.P.C to summon respondent No.2 Amandeep Singh @ Ambi and respondent No. 3 Baldev Singh as additional accused in criminal case having FIR No.16 dated 30.01.2017 under Sections 302, 148, 149 IPC, Police Station Sardulgarh District Mansa, is dismissed.

The brief facts pertaining to the present case are as under:-

that Kuljit Kaur daughter of complainant Kuldeep Singh performed marriage with respondent No.2 Amandeep Singh @ Ambi son of accused Darshan Singh against the wishes of her family. Then FIR was lodged against respondent No.2 Amandeep Singh @ Ambi by Kuldeep Singh but later on the said FIR was cancelled by High Court. Thereafter on 20.05.2015 respondent No.2 Amandeep Singh @ Ambi lodged FIR under Section 307 IPC in Police Station Sardulgarh District Mansa against Kuldeep Singh father of Kuljit Kaur, in which Kuldeep Singh was arrested but was later on granted bail by the Court concerned. On 30.01.2017 the complainant, his son Gurwinder Singh and one Amrik Singh had gone to Sardulgarh and at about 1.30 PM the complainant and Amrik Singh went inside the New Genius Mobile shop to purchase a new mobile phone while Gurwinder Singh was standing outside the said shop near one car and in the meanwhile Darshan Singh, his son Amandeep Singh @ Ambi, one Baldev Singh along with three other unknown persons reached there on two motorcycles and then Baldev Singh exhorted his accomplices to catch hold of Gurwinder Singh and that Gurwinder Singh should not escape and then said Baldev Singh and Amandeep Singh @ Ambi caught Gurwinder Singh from his arms and Darshan Singh (a baptized sikh) who was having Siri Sahib, took out the same and gave two blows of Siri Sahib on the back of Gurwinder Singh, as a result of which Gurwinder Singh fell down and in the meantime complainant and Amrik Singh came out of the shop and raised alarm

on which the accused persons ran away from the spot on their motorcycles. Injured Gurwinder Singh was taken to civil hospital Sardulgarh where he succumbed to his injuries. The police also received the information regarding aforesaid incident and complainant got recorded his statement and consequently, FIR was registered against Darshan Singh, Amandeep Singh @ Ambi, Baldev Singh and three other unknown persons for causing murder of Gurwinder Singh, the son of the complainant.

The police conducted investigation and during investigation respondents No.2 and 3 were found innocent and after completion of investigation the police presented challan against Darshan Singh while respondents No.2 and 3 were placed in column No.2 of the report submitted by the police under Section 173 Cr.P.C. The learned Trial Court framed charge under Section 302 IPC against Darshan Singh to which he did not plead guilty and claimed trial. During trial prosecution examined PW1 Kuldeep Singh (complainant) and while appearing in the witness box the complainant reiterated the prosecution version and stated that at the time of occurrence Amandeep Singh @ Ambi and Baldev Singh caught Gurwinder Singh from his arms while Darshan Singh gave fatal blows of Siri Sahib to Gurwinder Singh, which resulted in his death.

The prosecution filed an application under Section 319 Cr.P.C. to summon Amandeep Singh @ Ambi and Baldev Singh as

additional accused, after recording of the testimony of PW.1 Kuldeep Singh (complainant).

After hearing the State counsel assisted by counsel for the complainant and the defence counsel appearing on behalf of accused Darshan Singh, the learned trial Court dismissed the said application with the following observations:-

“....that though PW1 Kuldeep Singh has specifically named Amandeep Singh @ Ambi and Baldev Singh as having committed the offence but it is not out of place to mention here that standard of proof under Section 319 Cr.P.C is much higher than of prima facie case. Though averments made by the applicant/ prosecution could have suffice being a prima facie case but to prove higher standard of proof the complainant could not prove that alleged accused were involved in the commission of the offence.”

The complainant being aggrieved by the impugned order dated 02.01.2018 has filed the present criminal revision petition. At the time of issuance of Notice of Motion, the learned Trial Court was directed to continue with the trial but not to pronounce the final judgment.

The present petition is resisted by respondents No.2 and 3.

The counsel for the petitioner has contended that the issue with regard to the scope and power of the Court under Section 319 Cr.P.C has been considered by the Constitution Bench of the Hon'ble Supreme Court in the case of ***Hardeep Singh Vs. State of***

Punjab (2014) 3 SCC 92. The counsel for the petitioner further submitted that the Hon'ble Supreme Court while dealing with the relevant issue clearly held that Section 319 Cr.P.C. empowers the Court to proceed against other persons who appeared to be guilty of offence, though not an accused before the Court.

The counsel for the petitioner while referring to FIR No.16 dated 30.01.2017 under Section 302/148/149 IPC Police Station Sardulgarh, has submitted that the said FIR was registered on the basis of the statement of PW1 Kuldeep Singh (complainant) wherein he clearly stated that at the time of occurrence Amandeep Singh @ Ambi and Baldev Singh caught Gurwinder Singh from his arms while Darshan Singh gave fatal blows of Siri Sahib to Gurwinder Singh which resulted in his death and immediately after the occurrence all three of them along with three other unidentified persons, sped away from there on motorcycles. The counsel for the petitioner has further contended that the accused party pressurized the police officials and as such the police favoured Amandeep Singh @ Ambi and Baldev Singh by declaring them innocent during the investigation. The counsel for the petitioner has further submitted that only Darshan Singh was challaned by the police and charges were framed against him and even during trial the complainant again named Amandeep Singh @ Ambi and Baldev Singh to be the persons who caught hold of Gurwinder Singh while Darshan Singh caused fatal injuries to him with Siri Sahib. The counsel for the petitioner

has further contended that there is more than *prima facie* evidence appearing on record against Amandeep Singh @ Ambi and Baldev Singh and as such they should be summoned as additional accused to face trial along with accused Darshan Singh with regard to murder of Gurwinder Singh.

The State counsel has also argued on the same lines.

The counsel appearing on behalf of respondents No.2 and 3 have supported the impugned order. Both of them have argued that the trial Court has rightly declined the application moved by the prosecution under Section 319 Cr.P.C. in the light of the law laid down by the Hon'ble Supreme Court in **Hardeep Singh's** case (supra) wherein 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 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 not exercise power under Section 319 Cr.P.C. It has been further argued that in the instant case the gazetted police officer conducted detailed investigation and finally gave his report with regard to innocence of Amandeep Singh @ Ambi. That even Baldev Singh was also declared innocent by the investigation agency vide DDR No. 29 dated 14.03.2017 and trial Court rightly passed the impugned order.

I have considered the submissions made by counsel for the parties.

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) Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(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 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.”

Undoubtedly, the said provision of law confers an extraordinary power on the Court, which can be exercised at any stage before final conclusion of the trial. The scope and ambit of Section 319 Cr.P.C has been settled by the Hon’ble Supreme Court in

Hardeep Singh's case (supra) wherein it is clearly observed that Section 319 Cr.P.C empowers the Court to proceed against other persons who appear to be guilty of offence, though not an accused before the Court. The Hon'ble Supreme Court while dealing with the matter, further observed that at the time of taking cognizance the Court has to see whether a *prima facie* case is made out to proceed against the accused. Under Section 319 Cr.P.C, though the test of *prima facie* case is the same, the degree of satisfaction that is required is much stricter.

The Hon'ble Supreme Court in ***Brijendra Singh Vs. State of Rajasthan 2017 (3) RCR (Cri) 374*** while recapitulating the principles enunciated in ***Hardeep Singh's case (supra)*** observed that the degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The *prima facie* opinion which is to be formed requires stronger evidence than mere probability of his complicity.

Recently, the Hon'ble Supreme Court in ***Ramesh Chandra Srivastva Vs. State of U.P. 2021 (4) RCR (Cri) 219*** reiterated 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 but short of satisfaction to an extent that 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 the light of the settled position of law, as discussed above, it is evident that the trial Court is having power under Section 319 Cr.P.C. to proceed against the persons who have not been charge sheeted as an accused. However, the said power is discretionary and extra ordinary which should be exercised sparingly and only in those cases where the circumstances of the case so warrants.

Now adverting to the facts of the present case, admittedly, respondents No.2 and 3 were named as accused in the FIR which was registered on the basis of the statement of PW.1 Kuldeep Singh (complainant) wherein he stated that at the time of occurrence both respondents No.2 and 3 caught Gurwinder Singh from his hands while accused Darshan Singh gave fatal blows of Siri Sahib to said Gurwinder Singh. During investigation accused Darshan Singh was arrested and recovery of weapon used in commission of crime was effected at his instance. After completion of investigation the police presented the challan against accused Darshan Singh while respondents No.2 and 3 were placed in column No.2 of the charge sheet. The learned trial Court framed charges against accused Darshan Singh and during trial, the complainant while appearing in the witness box as PW1 has again reiterated and reaffirmed his original version as was recorded in the FIR.

I have gone through the original record of the trial Court. From the perusal of the same, it appears that Kuljit Kaur wife of respondent No.2 Amandeep Singh @ Ambi gave one application to Inspector General of Police, with regard to innocence of her husband and even complainant Kuldeep Singh gave one application seeking fair and proper investigation in the present case and then the matter was inquired into by Superintendent of Police (Investigation) and during said inquiry statements of different persons who appeared on behalf of the applicant were recorded and further in the said inquiry statement of complainant Kuldeep Singh and that of two other persons namely Pargat Singh and Amrik Singh who supported the version of the complainant were also recorded and finally the said gazetted police officer after going through the statements of different witnesses and the concerned CCTV footage came to the conclusion that at the time of occurrence Amandeep Singh @ Ambi (respondent No.2) was found to be present in the area of Kullar Filling Station Malout Road Dabwali and thereby declared him innocent and the concerned inquiry report was forwarded to Senior Superintendent of Police concerned vide endorsement dated 4.12.2017. Respondent No.3 Baldev Singh was also found innocent vide DDR No.29 dated 14.03.2017 by the police.

The evidence recorded during the trial in the shape of the deposition of PW1 Kuldeep Singh (complainant) was nothing more than his statement which was already recorded by the police at the

time of registration of the FIR and there is no other material to support the so-called ocular version narrated by the complainant. However, the evidence collected by the police during investigation suggested otherwise. During investigation the respondents No.2 and 3 were found innocent by the police on the basis of the evidence collected by the investigating agency as per which respondent No.2 was not found present in Sardulgarh Town at the time of occurrence.

In these set of circumstances, the case of the prosecution/ complainant stands short of the degree of satisfaction which requires much stronger evidence than mere probability of complicity of respondents No.2 and 3.

For the foregoing reasons, this Court is of the opinion that view taken by learned trial Court does not suffer from any illegality or perversity, which may call for interference of this Court.

The criminal revision petition is hereby dismissed accordingly.

The original record of the learned trial Court be returned immediately along with the copy of this order and the trial Court should proceed further in the trial against accused Darshan Singh.

02.02.2023

P. Chawla/ Jiten

**(KARAMJIT SINGH)
JUDGE**

Whether reasoned / speaking?
Whether reportable?

Yes / No
Yes / No