

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

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2023:PHHC:122438

CRR-1549-2023 (O&M)

Date of decision: September 14th, 2023

Kashmir Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Gagandeep Singh Simble, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J.

The petitioner is impugning the order dated 29.03.2023, whereby application moved under Section 319 Cr.P.C. by the prosecution in FIR No.05 dated 20.01.2018 under Sections 307, 324, 323, 341, 427, 379, 506, 148, 149 IPC and Section 25 Arms Act registered at Police Station Sekhwan, Police District Batala, District Gurdaspur, has been allowed by the Court of learned Additional Sessions Judge, Gurdaspur, and the petitioner ordered to be summoned to face trial of the case along with co-accused.

2. The relevant extract of the allegations levelled in the FIR (Annexure P-1) by respondent No.2-complainant are reproduced as under:-

“My husband Harjit Singh is serving in the police department at Jalandhar. My paternal village is Thikriwal. We are two sisters and one brother. I have one god brother namely Mithu Singh and my brother Sarwan Singh is in Canada. He got married about 13 years ago with Davinder Kaur d/o Kashmir Singh Caste Jat, r/o Mundi Kohal, P.S. Sekhwan. My sister-in-law Davinder Kaur's brothers namely Varinder Singh @ Rana Cheema, Harpreet Singh @ Happy son of

*Kashmir Singh, Caste Jat r/o Mundi Kohal, P.S. Sekhwan had taken Rs. 10.00 lakhs from my mother and my brother Sarwan Singh. My mother Lakhwinder Kaur and my god brothers Mithu Singh used to demand their money back from them, due to which they used to be quarrel on demand of money with the in-laws family of my brother and my mother alongwith my god brother Mithu. For this reason on 16.01.2018 my god brother Mithu Singh was given injuries in his house as Varinder Singh @ Rana Cheema, Harpreet Singh @ Happy sons of Kashmir Singh Caste Jal r/o Mundi Kahal entered his house and caused him injuries. And he was admitted in Civil Hospital Batala and my brother Mithu Singh son of Late Sohan Singh on his statement Varinder Singh @ Rana Cheema, Harpreet Singh @ Happy sons of Kashmir Singh caste Jat, Rio Mundi Kahal, P.S. Sekhwan a case was registered against them bearing FIR No. 4 dated 18.01.2018 u/s 452, 324, 323, 506, 34 IPC P.S. Sekhwan was registered. Today I and my husband Harjit Singh, my son Akrambir Singh and my god brother Mithu Singh who had got discharged from hospital and had returned. After meeting him and knowing his well being we were returning in our Alto Car to Jalandhar when we reached near the house of Dalbir Singh s/o Shyam Singh r/o Thikri Wala Guraya at 4.40 p.m. from the side of Butter on the kacha path one vehicle Ford Figo Sports which was driven by Varinder Singh @ Rana Cheema on the co-driver seat **his father Kashmir Singh** and on the rear seat Kulwant Kaur wife of Kashmir Singh, Davinder Kaur d/o Kashmir Singh caste jat r/o Mundi Kohal were seated. And they rammed their vehicle in our car Alto and one more vehicle i-20 grey in colour which was being driven by Harpreet Singh @ Happy alongwith four unidentified persons. They parked the vehicle on the back side of our car. And one more vehicle the brand I do not know which consisted of five unidentified*

persons parked the vehicle in front of our vehicle. Varinder Singh @ Rana Cheema armed with datar and pistol in holster, **Kashmir Singh armed with datar**. Kulwant Kaur and Davinder Kaur are empty handed alighted from vehicle and Harpreet Singh @ Happy armed with datar and pistol in his holster and four more unidentified persons who were also armed with weapons alighted from the vehicle and another vehicle five unidentified persons who also had deadly weapons. All the accused encircled our vehicle and took us out from our vehicle. Davinder Kaur, Kulwant Kaur and **Kashmir Singh gave lalkara** and said "catch hold of them and they will be taught a lesson. For helping god brother Mithu Singh" and Harpreet Singh gave datar blow on my husband Harjit Singh and it hit on his left arm bicep. Then my husband fell on the ground and while he was lying on the ground Varinder Singh @ Rana Cheema gave datar blow which hit on his right leg (tibia). Then **Kashmir Singh gave datar blow on my husband which hit on his left leg tibia**. Then Varinder Singh @ Rana Cheema and Harpreet Singh @ Happy fired on my husband which hits on his legs. Unidentified persons dragged my husband. And also caused injuries with their weapons. Harpreet Singh @ Happy and Varinder Singh @ Rana Cheema threatened my son Akrambir Singh and me by pointing his pistol at us in case you come forward and interfere in any manner your family will also bear the consequences. Varinder Singh @ Rana Cheema took out Rs. 95,000/- from the coat pocket of my husband and the above assailants alongwith their weapons ran away on their vehicles. My husband is under treatment who is not in condition to make statement. The remaining version he shall give with details when he is in condition to make statement."

3. Learned counsel appearing for the petitioner has vehemently argued that it is a case of false implication, which finds due

credence from the fact that subsequent to the registration of the FIR, during investigation, the petitioner along with his wife Kulwant Kaur and daughter Davinder Kaur were found innocent by the investigating agency. Learned counsel has argued that it could not have been possible for the petitioner to have participated in the crime because firstly he is a 77 year old man and secondly, during investigation, it had come to the fore that the petitioner was not even present at the place of occurrence as he was in the office of Senior Superintendent of Police, Batala, at the relevant time. It has been further submitted that a fabricated version having been brought forth by the complainant on account of strained relations between the parties is evident from the fact that it was after four days of the occurrence in question, respondent No.2 made a supplementary statement under Section 161 Cr.P.C., wherein she falsely implicated eight more persons in the case in hand, who too were not challaned by the police.

4. I have heard learned senior counsel for the petitioner and perused the relevant material on record.

5. Before proceeding further, it needs to be reiterated that the object behind Section 319 Cr.P.C. is to ensure that no one who appears guilty escapes trial in relation to that guilt. No doubt, the power of summoning a person as an accused is not to be exercised in a routine and mechanical manner but with circumspection, however, there should not be any hesitation in invoking the provisions of Section 319 Cr.P.C. if on consideration of all the material available on record, the Court feels the necessity to summon some person as an additional accused, who may even have been found innocent during investigation. Merely because the investigating agency found a person innocent during

investigation cannot be a ground to not summon him under Section 319 Cr.P.C., else it would defeat the very purpose for which Section 319 Cr.P.C. was enacted. The Hon'ble Supreme Court in *Hardeep Singh Versus State of Punjab 2014 (3) SCC 92* has held that "*Section 319 Cr.P.C. springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C.*"

6. Thus, the satisfaction of the investigating agency cannot be the sole determining factor not only qua the involvement of a person in a crime but also qua his/her innocence.

7. Coming to the instant case, a perusal of the allegations levelled in the FIR in question, which was lodged promptly, reveals that not only did the complainant name the petitioner therein but also spelt out the role played by him including the injury which he allegedly inflicted on the tibia of the left leg of injured Harjit Singh with a *datar*. The complainant while stepping into the witness box during trial, reiterated the allegations levelled including the injury attributed to the petitioner, which *prima facie* finds corroboration with the Medico Legal Report (MLR) of injured Harjit Singh. Furthermore, the contention of learned counsel that on the fateful day and at the relevant time of occurrence, the petitioner was present in the office of the Senior Superintendent of Police, Batala, cannot be gone into while deciding an application under Section 319 Cr.P.C. because any such defence of *alibi* would be appreciated only during trial.

8. The submissions made by the learned counsel qua the complainant falsely involving eight more persons, in the occurrence in

question, after four days, and they all too having been found innocent by the investigating agency, would not in any manner come to the rescue of the petitioner, as his name and role in the alleged crime had been spelt out by the complainant at the first instance itself while lodging the FIR.

9. The Hon'ble Supreme Court in *Hardeep Singh's case* (*supra*) has laid down the following parameters for summoning a person to face trial as an accused under Section 319 Cr.P.C.:-

“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 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. 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.

10. Hence, in the facts and circumstances and the parameters laid down in *Hardeep Singh's case (supra)*, the learned trial Court did not err in summoning the petitioner as an additional accused to face trial under Section 319 Cr.P.C.

11. The instant revision petition being devoid of any merit is dismissed.

12. 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.

September 14th, 2023
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No