

CRR-1524-2022 (O&M) and other connected petitions - 1-
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232 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.

CRR-1524-2022 (O&M)
DECIDED ON: 12th MAY, 2023
- SUKHA SINGH

.....PETITIONER
- VERSUS
- STATE OF HARYANA AND ANOTHER

.....RESPONDENTS
2.

CRR-1556-2022 (O&M)
- GURLAL SINGH

.....PETITIONER
- VERSUS
- STATE OF HARYANA AND ANOTHER

.....RESPONDENTS
3.

CRR-1728-2022 (O&M)
- LAKHWINDER SINGH @ LAKHA

.....PETITIONER
- VERSUS
- STATE OF HARYANA AND ANOTHER

.....RESPONDENTS
4.

CRR-1872-2022 (O&M)
- VIRENDER SINGH

.....PETITIONER
- VERSUS
- STATE OF HARYANA AND ANOTHER

.....RESPONDENTS
5.

CRR-2101-2022 (O&M)
- AZAD SINGH

.....PETITIONER
- VERSUS
- STATE OF HARYANA AND OTHERS

.....RESPONDENTS

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AND

6.

CRR-2234-2022 (O&M)

GULAB SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Ashit Malik, Advocate
for the petitioner (in CRR-1524-2022).

Mr. Pankaj Bali, Advocate
for the petitioner (in CRR-1556-2022 and CRR-2234-2022).

Mr. Vikram Singh, Advocate
for the petitioner (in CRR-1728-2022).

Mr. Tejinder Pal Singh, Advocate
for the petitioner (in CRR-1872-2022).

Mr. G.S. Dhillon, AAG, Haryana.

Mr. V.K. Jindal, Sr. Advocate with
Mr. Pankaj Gautam, Advocate
for the petitioner (in CRR-2101-2022)
for respondent No.2-complainant (Azad Singh).

SANDEEP MOUDGIL, J

1. Vide this common order, this Court intends to dispose off all the afore-mentioned criminal revision petitions together, as they are arisen out of the same impugned order involving same set of facts and identical question of law.

2. All the afore-said criminal revision petitions have been preferred by Virender Singh, Sukha Singh, Lakhwinder Singh, Gulab Singh, Azad Singh and Gurlal Singh respectively, *inter alia*, seeking to set aside the

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order dated 01.07.2022 passed by Additional Sessions Judge, Karnal, vide which the application under Section 319, Cr.P.C., 1973 filed by prosecution/respondent-State for summoning the additional accused to face trial along-with the accused already facing trial for the commission of offences under Sections 120-B, 323, 324, 302, 195-A, 34 and 506 of the Indian Penal Code, 1860, which has been allowed qua Gulab Singh, Gurlal Singh, Sukha Singh, Virender Singh and Lakhwinder Singh @ Lakha whereby qua, Kuldeep Kaur and Manjeet Singh has been dismissed.

3. It is Sukha Singh in CRR-1524-2022, Gurlal Singh vide CRR-1556-2022, Lakhwinder Singh @ Lakha in CRR-1728-2022, Virender Singh in CRR-1872-2022 and Gulab Singh through CRR-2234-2022 have assailed the order dated 01.07.2022 against they are summoning as additional accused, whereas Azad Singh in CRR-2101-2022 has challenged the same order to the extent of dismissal of application qua Kuldeep Kaur, Manjeet Singh seeking their summoning as well under Section 319 Cr.P.C.,

4. The facts, relevant, vis-à-vis the controversy involved in the *lis*, are being noticed here, as narrated in the FIR bearing No.0145 dated 03.05.2021 under Sections 148, 149, 323, 324 and 506 IPC, registered at Police Station Nissing, District Karnal. The said FIR was registered at the behest of Azad Singh-complainant alleging that on 03.05.2021 at about 7.30 A.M., Sandeep Singh, Mehtab Singh, Gulab Singh, Lakhan Singh, Sukha Singh, Gurlal Singh and Virender Singh had inflicted injuries on the person of his father Baghel Singh with their respective deadly weapons. It is alleged that the reasons for the assault was earlier cases pending between them and Sandeep Singh in which he was convicted and was pressurizing

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them for a compromise to which they did not agree. It is further alleged that on the very same day i.e. 03.05.2021, Baghel Singh succumbed to his injuries during the treatment, hence, Section 302 IPC was added by the Investigating Agency. It is alleged that during the investigation of the case, the accused Sandeep Singh was arrested by the Investigating Agency on 10.05.2021, who made confessional statement before the Investigating Agency that he had committed the murder of Bagel Singh on 03.05.2021 in connivance with Mehta Singh, Gurwinder Singh and Sajjan Singh, who went to the alleged place of occurrence on their respective vehicles and inflicted injuries to the deceased, resulting into his death. On the basis of the confessional statement of Sandeep Singh, the weapons as well as the motorcycle used in the alleged crime was recovered by the Investigating Agency. Subsequently accused Mehtab Singh and Gurwinder Singh @ Ginda were apprehended on 16.05.2021 and accused Sajjan Singh was arrested on 27.05.2021, who made their respective confessional statements on the same lines as of accused Sandeep Singh with regard to the commission of alleged crime got recovered weapons and motorcycle used by the accused persons. During the investigation of the case, Section 120-B and 195- A IPC were also added, whereby Gurvinder Singh @ Ginda and Sajjan Singh were nominated as accused.

5. After completion of the investigation of the case Sections 148, 149 PC were deleted and Section 34 IPC was added, wherein challan was filed under Sections 120-B, 195-A, 302, 323, 324, 506, 34 PC against Sandeep Singh @ Sonu, Mehtab Singh @ Gujju, Gurvinder Singh @ Ginda and Sajjan Singh whereas Virender Singh, Sukha Singh, Lakhwinder Singh

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@ Lakha, Gurlal Singh and Gulab Singh were found innocent, who were placed in column No.2 on the basis of the call record, CCTV footage, affidavit/statements under Section 161 of Cr. P.C. of co-villagers as well as on the basis of the confessional statements made by the co-accused persons.

6. Aggrieved by the action of the Investigating Agency, declaring Virender Singh, Sukha Singh, Lakhwinder Singh @ Lakha, Gurlal Singh and Gulab Singh as innocent, the prosecution filed an application under Section 319 Cr.P.C. for summoning them as additional accused.

7. Learned counsel for the petitioners has vehemently argued that during investigation it was found that Gurlal Singh was found present at dera of Jarnail Singh, Virender Singh was found present at the house of Balwinder Singh son of Gurcharan Singh, Gurlal was found present at the house of Harpal Singh, Sukha Singh was found present at Sheshgang Gurdawara and Lakhwinder Singh @ Lakha was found at his house in Village Bahlolpur. It is asserted that CDR of all the accused-persons were collected by the investigating agency and as per the said report none of the accused had ever contacted either with Sandeep Singh or other arrested accused on or before 03.05.2021. Assertion is that on the basis of the call record, CCTV footage, affidavit/statements under Section 161 of Cr. P.C. of co-villagers as well as on the basis of the confessional statements made by the aforesaid accused persons, Virender Singh, Sukha Singh, Lakhwinder Singh @ Lakha, Gurlal Singh and Gulab Singh were found innocent and were placed in column No.2 of the challan.

8. It is further contended that after filing of the report under Section 173 Cr.P.C., no protest petition was filed by the complainant

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whereas the statement made by the complainant-Azad Singh while appearing in the witness box as PW-1 is a mere reiteration of the statement made by him in the FIR and the same cannot be made the basis for invoking the power under Section 319 Cr.P.C.

9. Learned State counsel as well as Mr. V.K. Jindal, Learned Sr. Advocate for respondent No.2 in CRR-1524-2022 contended that all the accused-persons were implicated by name and attributed a specific role in the occurrence. It is asserted that except Kuldeep Kaur and Manjeet Singh, the location of mobile phones of all the other accused persons as per the details collected by the investigating agency are consistent with their presence on the spot at the time of alleged occurrence. It is further stated that on the basis of mobile phones' location of accused persons, it cannot be finally concluded that they were not present at the spot of occurrence, especially when specific attribution in the FIR by their names as well as confessional statements is on record, which is sufficient putting them to face trial, inasmuch as all the accused persons have actively participated in the commission of offence being the member of unlawful assembly.

10. Heard learned counsel for the respective parties.

11. The question involved in this bunch of petitions revolves solely around the powers vested with the trial for summoning additional accused under Section 319 Cr.P.C.

12. At the outset, I must say on the basis of settled proposition that intent of legislation to incorporate Section 319 in the Criminal Procedure Code is to bestow the Courts with discretionary power though at the same time such power shall now be exercised and interfered with in a casual and

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routine manner, unless it is shown that the order refusing to implead the persons as accused has been made mechanically or it is arbitrary or perverse. The trial court, while refusing to take cognizance against the accused, is bound to take into account every aspect of the matter and the entire material placed before it and more particularly and chances of conviction of those persons who have been sought to be summoned as accused.

13. This dispute is no more res integra, which has been dealt with in so many cases like "Guriya alias Tabassum Tauquir v. State of Bihar", AIR 2008 SC 95, the Apex Court analyzed Section 319 Cr.P.C., to observe as under:-

"Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it, if it is satisfied that any person other than accused has committed an offence and he is to be tried together with the accused. The power is discretionary must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates evidence of witnesses given in Court. Under sub-section (4)(1)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of sub-section (4) (1) (b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned."

14. Undoubtedly, the power under Section 319 Cr.P.C., is vast, but is to be exercised sparingly. Although every person is presumed to be

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innocent, but it is the duty of the trial Court to adjudge the innocence or the guilt of the person. In grave offences, in case there is sufficient evidence to indicate or to point towards the involvement of a person, who has not been charge-sheeted by the police, ordinarily the Court should proceed against him.

15. The guilt and involvement of a person in grave offences should not be overlooked on the basis of hyper-technicalities and should not be ignored by myopic vision.

16. The purpose of criminal justice system is to protect the society from those persons who violate the law and who pose a threat to the society at large. The protection of the society from offenders is foundation, or *raison detre* (reason to be) of the criminal Courts. Therefore, if there is sufficient evidence against a person, the trial Court would be justified in proceeding against such a person.

17. Criminal Justice System has been considered by the Hon'ble Apex Court in the case of **"Rajendra Singh v. State of U.P." (2007) 3 SCC (Cri) 375** and observed as under:

"The power under Section 319 Cr.P.C., is conferred on the Court to ensure that justice is done to the society by bringing to book all those guilty of an offence. One of the aims and purpose of the criminal justice system is to maintain social order. It is necessary in that context to ensure that no one who appears to be guilty escapes a proper trial in relation to that guilt. There is also a duty to render justice to the victim of the offence. It is in recognition of this that Cr.P.C. has specifically conferred a power on the Court to proceed against others not arrayed as accused in the circumstances set out by Section 319 Cr.P.C. It is a salutary power enabling the discharge of a Court's obligation to the society to

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bring to book all those guilty of a crime.

While applying its judicious mind on an application under Section 319 Cr.P.C., the trial Court cannot go into microscopic discussion of the evidence. It is required to see the existence of a strong prima facie case against the alleged accused. At the initial stage of proceeding against the person, the trial Court is not concerned with the issue whether the trial would conclude with a conviction or not. Since the provision of Section 319(4)(a) envisages a fresh trial for the newly added accused, fresh evidence needs to be recorded, the evidence so recorded has to be discussed and analyzed by the trial Court. Thus, the trial Court is not required to meticulously discuss the evidence while exercising the power under section 319 Cr.P.C."

18. The Supreme Court in the case of "**Sukhpal Singh Khaira vs. State of Punjab**" 2023 (1) SCC 289; has issued some guidelines, which are as under:-

"33. III. What are the guidelines that the competent court must follow while exercising power under Section 319 CrPC, 1973?"

(i) If the competent court finds evidence or if application under section 319 of CrPC, 1973 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. (ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

(iii) If the decision of the court is to exercise the power under section 319 of CrPC, 1973 and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

(iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also

apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

(v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

(vi) If the decision is that the summoned accused can be tried separately. on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.

(vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

(viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under section 319 of CrPC, 1973 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 split up (bifurcated) trial.

(ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under section 319 of CrPC, 1973 the appropriate course for the court is to set it down for re-hearing.

(x) On setting it down for re-hearing, the above laid down procedure to decide about summoning: holding of joint trial or otherwise shall be decided and proceeded with accordingly.

(xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

(xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier:

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned

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accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused."

19. The contention with regard to the fact that the complainant has not filed a protest petition is concerned, the same cannot be a predicament for the prosecution to move an application under Section 319 Cr.P.C. The complainant while appearing in the witness box as PW-1 has specifically deposed with regard to the involvement of the summoned accused persons, which finds corroboration from the earlier statement made by the complainant while lodging FIR as well as the statement made by an eye-witness Arjun Singh under Section 161 Cr.P.C. The contention that the petitioners were not present at the spot in view of their mobile tower locations, has been rightly argued by Mr. Jindal, learned Sr. Advocate that mere tower location of a mobile phone is no indicator of a person's innocence and presumption cannot ruled out that the mobile number might have been used by some other person at the time of occurrence.

20. The next pieces of evidence that are being cited are the CCTV recordings, which were obtained by the police according to recovery memos dated 23.06.2021 and the affidavits of relevant parties and their statements recorded under Section 161 Cr.P.C. In fact, one of the CCTV footage, which was captured from the house of Jarnail Singh, it cannot be a conclusive evidence to establish that Gulab Singh was present at Jarnail Singh's home or dera for the full time frame between 04:20 and 11:00 A.M. as claimed. The CCTV footage obtained from the residence of Balwinder Singh only captures Virender Singh and his elder brother. According to PW1 Azad

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Singh, the timing of the claimed incident and the distance between it and Village Umedpur do not contradict each other or the prosecution's evidence. With regard to the CCTV recording of the camera placed at the Gurdwara of the Village of Khanpur Gaddiyan, the same depicts the presence of Virender Singh and his elder brother at the village on 03.05.2021 at around 05:47 A.M. and taking into account the time of the alleged occurrence as well as the distance between the Village of Khanpur Gaddiyan and the place of occurrence, even the same is true.

21. As far as the contention raised by learned counsel for the petitioners qua the affidavits of the persons from whom the CCTV recordings were collected is concerned, again that cannot be the basis to conclude at this stage that these persons were not present at the spot during the alleged occurrence. Sukha Singh was allegedly present at a Gurdwara in the village of Taraori at around 8:00 am, according to the affidavits signed by Lakhwinder Singh and Narinder Singh, but as per CDR/location data used by the accused themselves, Sukha Singh was in the village of Ballu at 8:00 am, indicating that the affidavits cannot be trusted as a gosiple truth without putting them in trial unless they are proved as per law.

22. In view of the afore-said discussions as well as the test laid down by Apex Court in Hardeep Singh's case (supra) and Babubhai Bhimabhai Bokhiria & Another's case (supra), this Court finds no infirmity, perversity and illegality inviting interference of this Court in the order dated 01.07.2022 passed by the trial court and as such the petitions preferred by Sukha Singh in CRR-1524-2022, Gurlal Singh vide CRR-1556-2022, Lakhwinder Singh @ Lakha in CRR-1728-2022, Virender Singh in

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CRR-1872-2022 and Gulab Singh through CRR-2234-2022 are hereby dismissed.

23. Now coming to CRR-2101-2022 filed by Azad Singh-complainant assailing the order of trial Court dated 01.07.2022 to the extent that it has erroneously left out Kuldeep Kaur and Manjit Singh, who also ought to have been summoned as additional accused under Section 319 Cr.P.C., is concerned, their role has not been specifically pointed out except few calls of Kuldeep Kaur with her son Sandeep Singh one of the accused and Manjit Singh, who is brother-in-law of Sandeep Singh. It is on the strength of such call detail it has been urged that both have conspired alongwith others and sought their summoning stating that they advanced threat to kill the complainant Azad Singh and his uncle Arjun Singh. The perusal of statement of PW-1 Azad Singh made during the trial proceedings clearly indicate that it was deceased Baghel Singh, who has been attacked and was the main target and even on seen the complainant and Arjun Singh, it is on record on behalf of complainant himself as PW-1 that the persons present at the spot shouted that they had come to kill Baghel Singh, who thereafter causing injuries on his person left the spot without causing any harm to Azad Singh and Arjun Singh.

24. In the light of evidence of the complainant himself as led before the trial Court till now does not inspire the confidence of this Court as well to make it a fit case in the absence of a sufficient material, which may lead to their conviction, cannot be summoned in the framework of Section 319 Cr.P.C., as has been discussed hereinabove, while exercising such power with care and caution.

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25. Hence, CRR-2101-2022 is also ordered to be dismissed as such.
26. A copy of this order be placed on the files of other connected petitions.

12nd MAY, 2023
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(SANDEEP MOUDGIL)
JUDGE

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