

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2144-2022

Date of Decision: 16.12.2023

HEMPAL

... Petitioner

Versus

STATE OF HARYANA & ANOTHER

...Respondents

CRR-2052-2022

ARUN PRATAP & ANOTHER

... Petitioners

Versus

STATE OF HARYANA & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Jai Bhagwan Sharma, Advocate
for the petitioner in CRR-2144-2022.

Mr. Abhimanyu Singh, Advocate with
Mr. Sithar Goel, Advocate
for the petitioner in CRR-2052-2022.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

Mr. Baljeet Beniwal, Advocate
for respondent No.2.

JASJIT SINGH BEDI, J.

This order shall dispose of two petitions bearing No.CRR-2144-2022 titled as Hempal Versus State of Haryana & another and CRR-2052-2022 titled as Arun Pratap & another Versus State of Haryana & another as the same are arising out of the same FIR. However, for the sake of convenience the facts have been taken from CRR-2144-2022.

2. The prayer in the instant revision petitions are for setting aside of the order dated 05.09.2022 passed by the Sessions Judge, Faridabad vide

which the petitioners have been ordered to be summoned to face Trial under Section 319 Cr.P.C. for the offences under Sections 302 and 201 read with Section 34 IPC.

3. The brief facts of the case are that an FIR No.430 dated 31.10.2020 under Sections 302/201/34 IPC, Police Station Sadar Ballabgarh, Faridabad came to be registered at the instance of Chanderpal (respondent No.2) son of Chunnilal and the same reads as under:-

“To SHO Police Station Sadar Ballabhgarh. Respected sir, it is requested that I am Chanderpal son of Chunnilal, a resident of village Machgar and I am a retired subedar from the Indian Army and I am a farmer. I have three children amongst which one is a girl and two are boys. The girl is married, the elder son of is Bhushan and the younger boy is Akshay, both are unmarried. About 5-6 years ago Rahul and Arun Pratap, sons of Ajab Singh who are my nephew in the relation, together attacked my son Akshay, in which he was shot in the eye, for which we filed a case against them in Sadar Ballabgarh police station, for which the court had convicted Rahul and Arun Pratap and sentenced them for a seven years imprisonment, are presently out on bail from the High Court. On 25/05/2020, Saroj’s son Hukam Singh, who is my uncle’s son in the relation, with whom my son Akshay had a fight, for which Deepak son of Sooraj had filed a case for my son Akshay was out on bail. Rahul, Arun Pratap son of Ajab Singh, Deepak son of Sooraj, Hempal son of Satpal kept keen enimity about things like these and used to say, that “because of you we got punished and you injured Saroj and damaged his leg therefore we will take revenge from you.” Yesterday on 30/10/2020, my son Akshay did not come home even till 10:20 pm, so I called from my phone no 9971458376 on Akshay’s phone no 9643770102, then he

told me that I am coming home, but when he did not come even after half an hour, then I left my house in order to search for my son and walked towards village pond. That when I reached near the transformer, I saw that my son Akshay was being hit badly with brick, stones together by Rahul, Arun Pratap son of Ajab Singh, Deepak son of Sooraj, Hempal son of Satpal, Vijay Pal son of Hukam Singh and Akash son of Vijaypal, all residents of Machgar. When I started shouting, my nephew Robin son of Shyam Sundar also came there. So all the people mentioned above ran away leaving my son lying on the ground. When I saw my son Akshay, his head was broken and was lying unconscious covered in blood. His hands and legs were injured. I and Robin took him to Sarvodaya Hospital for treatment. Where the doctors checked my son Akshay and declared him dead. All the culprits who wanted to get my son Akshay punished from court, have killed him by hitting him in the head and body with bricks, sticks and stones. Legal action should be taken against him.

On 30.10.2020, INSP/SHO Subhash Kumar, SI Rajkumar, Constable Pradeep 3956, Driver constable Narendra 1191 were present at checking domination NAKA IMT chauk, where they got the information that Akshay son of Chander Pal Resident Gaon Macchgar have died in a fight and the body is in sarvodya hospital. IO was sent for investigation where investigator Shubhash Kumar station sector 7 reached where Akshay was found dead then he reached Sarvodya hospital where the dead body of Akshay was kept in the morchery. After waiting for some time father of the dead, Chandrapal came and gave a written request (abovementioned) and section 148, 149 and 302 IPC were imposed.”

4. After completion of the investigation of the case, the Final Report/Challan was filed on 12.01.2021 for the offences under Sections 302, 201 and 34 of IPC against Rahul, Deepak and Vijaypal but Arun Partap (petitioner in CRR-2052-2022), Aakash and Hempal (petitioner in CRR-2144-2022) were found innocent and they were exonerated by the Investigating Agency. The relevant extract of the Report under Section 173(2) Cr.P.C. reads as under:-

“The nominated accused in this offense namely Arun Partap son of late Ajab Singh, Hempal son of Satpal, Akash son of Vijaypal residence of village Macchgarh police station Sadar Balabgarh district Faridabad, the investigation was conducted on dated 09.12.2020 by Assistant Police Commissioner Faridabad Shri Anil Kumar HPS and during investigation accused Arun Partap, Hempal and Akash were not found involved in the above said crime. The Accused were found innocent. In this case Section 148, 149 has been deleted and section 34 IPC has been added. The case property of this case Palinda was prepared 05.01.2021 and sent to RFSLS Bhondsi for examination after the receipt of result will be added in the challan. Investigation of the case has been completed the accused Rahul # Vikram son of late Ajab Singh, Deepak son of Soraj and Vijaypal son of Hukum Singh residence of village Macchgarh district Faridabad the challan will be presented after the evidences of the case or brought on the record then complete challan U/s 173 CRPC will be submitted in the court. Witnesses in the column no.13 may be summoned.

Sd/-

SHO

Police Station Sadar Ballabgarh

Dated: 12.01.2021”

5. During the course of the recording of the evidence of PW2-Complainant/Chander Pal, an application was moved under Section 319 Cr.P.C. on 14.03.2022 to summon all the three additional accused to face Trial. The copy of the application is annexed as Annexure P-4 to the petition.

6. Based on the aforementioned application and on examining the evidence, the petitioner-Hempal (CRR-2144-2022) and petitioner-Arun Partap (CRR-2052-2022) were summoned to face Trial vide the impugned order dated 05.09.2022.

7. The aforementioned order has been challenged in the present petitions.

8. The learned counsels for the petitioners contend that the petitioners had wrongly been summoned under Section 319 Cr.P.C. Rahul @ Vikram, Deepak and Vijaypal had got recorded their confessional statements wherein, they had confessed that they alone had committed the offences in question. The petitioners had not been named therein. No independent witness had been joined. As the petitioners were found to be innocent, they were exonerated by the Asstt. Commissioner of Police, Faridabad. In fact, the impugned order had been passed in a mechanical manner ignoring the glaring facts of the case. The Trial Court had failed to seek any status report/case diary from the Investigating Agency as on what basis they had found the petitioners to be innocent. The deposition in Court was a mere reiteration of the contents of the FIR which had already been investigated leading to the exoneration of the petitioners and no new evidence had come on record to summon the petitioners. The complainant was not an eye-witness to the occurrence and had come to the spot later. No independent witness was

joined by the prosecution despite availability of the same. The uncorroborated statement of an interested witness such as the complainant could not be accepted to be the gospel truth. They, therefore, contend that the impugned order was liable to be set aside.

9. The learned State counsel as well as counsel for the complainant, on the other hand, contend that the role of the petitioners had been categorically enumerated in the FIR and subsequently in the deposition of the complainant in Court. From the evidence recorded so far, it was apparent that the petitioners could be tried for the commission of offence along with the accused already facing Trial. No reason whatsoever had been given by the Investigating Agency for the exoneration of the petitioners. Nothing specific was pointed out even during the course of arguments of the present case as to on what basis the petitioners had been exonerated. While exercising the powers under Section 319 Cr.P.C., the Court was not required or justified in appreciating the evidence of the prosecution witnesses on merits which was to be done during the course of the Trial. In the instant case, there was more than a *prima facie* case to summon the petitioners.

10. I have heard the learned counsel for the parties.

11. Before proceeding further in the matter, it would be apposite to refer to the provisions of Section 319 Cr.P.C.

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 the 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.”

12. The Hon'ble Supreme Court in the case of **Hardeep Singh Versus State of Punjab & others, 2014(1) R.C.R. (Criminal) 623**, held as under:-

“5. On the consideration of the submissions raised and in view of what has been noted above, the following questions are to be answered by this Bench :

(i) What is the stage at which power under Section 319 Cr.P.C. can be exercised?

(ii) Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

(iii) Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and

includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

(iv) What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319(1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood convicted?

(v) Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charged or who have been discharged?

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Question Nos.I & III

Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. ? Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under

Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No. II

Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV

Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for

summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No. V.

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh.

In **Sartaj Singh Versus State of Haryana & another, 2021(2)**

R.C.R. (Criminal) 527, it held as under:-

“6.2 Considering the law laid down by this Court in Hardeep Singh (supra) and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under section 319 CrPC, 1973 even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness

and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under section 319 CrPC, 1973 provided from the evidence (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial.

6.3 In S. Mohammed Ispahani v. Yogendra Chandak (2017) 16 SCC 226, this Court has observed and held as under: (SCC p. 243)

"35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge-sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet. Once that stage has gone, the Court is still not powerless by virtue of section 319 CrPC, 1973. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused."

6.4 In the case of Rajesh v. State of Haryana (2019) 6 SCC 368, after considering the observations made by this Court in Hardeep Singh (supra) referred to hereinabove, this Court has further observed and held that even in a case where the stage of giving opportunity to the complainant to file a

protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of section 319 CrPC, 1973 and even those persons named in FIR but not implicated in chargesheet can be summoned to face the trial provided during the trial some evidence surfaces against the proposed accused.

7. Applying the law laid down by this Court in the aforesaid decisions to the case of the accused on hand, we are of the opinion learned Trial Court was justified in summoning the private respondents herein to face the trial as accused on the basis of the deposition of the appellant - injured eye witness. As held by this Court in the aforesaid decisions, the accused can be summoned on the basis of even examination-in-chief of the witness and the Court need not wait till his cross-examination. If on the basis of the examination-in-chief of the witness the Court is satisfied that there is a prima facie case against the proposed accused, the Court may in exercise of powers under section 319 CrPC, 1973 array such a person as accused and summon him to face the trial. At this stage, it is required to be noted that right from the beginning the appellant herein - injured eye witness, who was the first informant, disclosed the names of private respondents herein and specifically named them in the FIR. But on the basis of some enquiry by the DSP they were not charge-sheeted. What will be the evidentiary value of the enquiry report submitted by the DSP is another question. It is not that the investigating officer did not find the case against the private respondents herein and therefore they were not chargesheeted. In any case, in the examination-in-chief of the appellant-injured eye witness, the names of the private respondents herein are disclosed. It might be that whatever is stated in the examination-in-chief is the same

which was stated in the FIR. The same is bound to be there and ultimately the appellant herein - injured eye witness is the first informant and he is bound to again state what was stated in the FIR, otherwise he would be accused of contradictions in the FIR and the statement before the Court. Therefore, as such, the learned Trial Court was justified in directing to issue summons against the private respondents herein to face the trial.

8. Now, so far as the impugned judgment and order passed by the High Court is concerned, it appears that while quashing and setting aside the order passed by the learned Trial Court, the High Court has considered/observed as under:

"No evidence except the statement of Sartaj Singh, which has already been investigated into by the concerned DSPs was relied upon by the trial Court to summon, which was not sufficient for exercising power under Section 319 Cr.P.C., 1973.

As per statement of Sartaj Singh, Palwinder Singh and Satkar Singh gave him lathi blows on the head. Manjeet Singh, Amarjeet Singh, Rajwant Singh, Narvair Singh and Sukhdev Singh were holding gandasi. Manjeet Singh, Amarjeet Singha and Rajwant Singh gave him gandasi blows on the head and face. All the injuries are stated to fall in the offence under Sections 323, 324, 326, 341 read with Section 149 IPC. In case, so many people as mentioned above were giving gandasi and lathies blows on the head, Sartaj Singh was bound to have suffered more injuries, which would not have left him alive and probably he would have been killed on the spot. He seems to have escaped with only such injuries as have invited offence only under Sections 323, 324, 326, 341 read with Section 149 of IPC.

Therefore, the trial Court erred in exercising his jurisdiction summoning the other accused where exaggeration and implication is evident on both sides."

8.1 The aforesaid reasons assigned by the High Court are unsustainable in law and on facts. At this stage, the High Court was not required to appreciate the deposition of the injured eye witness and what was required to be considered at this stage was whether there is any prima facie case and not whether on the basis of such material the proposed accused is likely to be convicted or not and/or whatever is stated by the injured eye witness in his examination-in-chief is exaggeration or not. The aforesaid aspects are required to be considered during the trial and while appreciating the entire evidence on record. Therefore, the High Court has materially erred in quashing and setting aside the order passed by the learned Trial Court summoning the accused to face the trial in exercise of powers under section 319 CrPC, 1973 on the reasoning mentioned hereinabove. Even the observations made by the High Court referred to hereinabove are on probability. Therefore, the impugned judgment and order passed by the High Court is not sustainable in law and on facts and is beyond the scope and ambit of section 319 CrPC, 1973.

8.2 In view of the above and for the reasons stated that, the present appeals succeed. The impugned judgment and order passed by the High Court dated 28.08.2020 in revision application bearing CRR No. 3238 of 2018 and CRMM No. 55631 of 2018 is hereby quashed and set aside and the order passed by the learned Trial Court summoning the private respondents herein to face the trial is hereby restored. The private respondents herein now to face the trial as summoned by the learned Trial Court. The present appeals are allowed accordingly.

(emphasis supplied)

In **Manjeet Singh Versus State of Haryana & others, 2021 SCC**

OnLine 632, it held as under:-

“34.The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under section 319 CrPC, 1973 can be summarized as under:

- (i) That while exercising the powers under section 319 CrPC, 1973 and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;*
- (ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;*
- (iii) the law has been properly codified and modified by the legislature under the CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;*
- (iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;*
- (v) where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial;*
- (vi) section 319 CrPC, 1973 allows the court to proceed against any person who is not an accused in a case before it;*
- (vii) the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency;*

- (viii) section 319 CrPC, 1973 is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;
- (ix) the power under section 319(1) CrPC, 1973 can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207 / 208 CrPC, committal, etc. which is only a pretrial stage intended to put the process into motion;
- (x) the court can exercise the power under section 319 CrPC, 1973 only after the trial proceeds and commences with the recording of the evidence;
- (xi) the word "evidence" in section 319 CrPC, 1973 means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;
- (xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under section 319 CrPC, 1973 is to be exercised and not on the basis of material collected during the investigation;
- (xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under section 319 CrPC, 1973 and can proceed against such other person(s);
- (xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under section 319 CrPC, 1973 can be exercised;
- (xv) that power under section 319 CrPC, 1973 can be exercised even at the stage of completion of examination-in-chief and the court need not wait till the said evidence is tested on cross-examination;
- (xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were

named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of section 319 CrPC, 1973 and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);

(xvii) while exercising the powers under section 319 CrPC, 1973 the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.

35. Applying the law laid down in the aforesaid decisions to the facts of the case on hand we are of the opinion that the Learned trial Court as well as the High Court have materially erred in dismissing the application under section 319 CrPC, and refusing to summon the private respondents herein to face the trial in exercising the powers under section 319 CrPC. It is required to be noted that in the FIR No.477 all the private respondents herein who are sought to be arraigned as additional accused were specifically named with specific role attributed to them. It is specifically mentioned that while they were returning back, Mahendra XUV bearing no. HR-40A-4352 was standing on the road which belongs to Sartaj Singh and Sukhpal. Tejpal, Parab Saran Singh, Preet Samrat and Sartaj were standing. Parab Sharan was having lathi in his hand, Tejpal was having a gandsi, Sukhpal was having a danda, Sartaj was having a revolver and Preet Singh was sitting in the jeep. It is specifically mentioned in the FIR that all the aforesaid persons with common intention parked the Mahendra XUV HR-40A-4352 in a manner which blocks the entire road and they were armed with the weapons. Despite the above specific allegations, when the charge-sheet/final report came to be filed

only two persons came to be charge-sheeted and the private respondents herein though named in the FIR were put/kept in column no.2. It is the case on behalf of the private respondents herein that four different DSPs inquired into the matter and thereafter when no evidence was found against them the private respondents herein were put in column no.2 and therefore the same is to be given much weightage rather than considering/believing the examination-in-chief of the appellant herein. Heavy reliance is placed on the case of Brijendra Singh (Supra). However none of DSPs and/or their reports, if any, are part of the charge-sheet. None of the DSPs are shown as witnesses. None of the DSPs are Investigating Officer. Even on considering the final report/charge-sheet as a whole there does not appear to be any consideration on the specific allegations qua the accused the private respondents herein who are kept in column no.2. Entire discussion in the charge-sheet/final report is against Sartaj Singh only.

36. So far as the private respondents are concerned only thing which is stated is "During the investigation of the present case, Shri Baljinder Singh, HPS, DSP Assandh and Shri Kushalpal, HPS, DSP Indri found accused Tejpal Singh, Sukhpal Singh, sons of Gurdev Singh, Parab Sharan Singh and Preet Samrat Singh sons of Mohan Sarup Singh caste Jat Sikh, residents of Bandrala innocent and accordingly Sections [148](#), [149](#) and [341](#) of the IPC were deleted in the case and they were kept in column no.2, whereas challan against accused Sartaj has been presented in the Court."

37. Now thereafter when in the examination-in-chief the appellant herein-victim-injured eye witness has specifically named the private respondents herein with specific role attributed to them, the Learned trial Court as well as the High Court ought to have summoned the private respondents herein to face the trial. At this stage it is required to be noted that so far as the appellant herein is concerned he is an injured eye-witness. As

observed by this Court in the cases of State of MP v. Mansingh (2003) 10 SCC 414 (para 9); Abdul Sayeed v. State of MP (2010) 10 SCC 259; State of Uttar Pradesh v. Naresh (2011) 4 SCC 324, the evidence of an injured eye witness has greater evidential value and unless compelling reasons exist, their statements are not to be discarded lightly. As observed hereinabove while exercising the powers under section 319 CrPC the Court has not to wait till the cross-examination and on the basis of the examination-in-chief of a witness if a case is made out, a person can be summoned to face the trial under section 319 CrPC.

38. Now so far as the reasoning given by the High Court while dismissing the revision application and confirming the order passed by the Learned trial Court dismissing the application under section 319 CrPC is concerned, the High Court itself has observed that PW1 Manjeet Singh is the injured witness and therefore his presence cannot be doubted as he has received fire arm injuries along with the deceased. However, thereafter the High Court has observed that the statement of Manjeet Singh indicates over implication and that no injury has been attributed to either of the respondents except they were armed with weapons and the concerned injuries are attributed only to Sartaj Singh even for the sake of arguments someone was present with Sartaj Singh it cannot be said that they had any common intention or there was meeting of mind or knew that Sartaj would be firing. The aforesaid reasonings are not sustainable at all. At the stage of exercising the powers under section 319 CrPC the Court is not required to appreciate and/or enter on the merits of the allegations of the case. The High Court has lost sight of the fact that the allegations against all the accused persons right from the very beginning were for the offences under Sections 302, 307, 341, 148 & 149 IPC. The High Court has failed to appreciate the fact that for attracting the offence under Section 149 IPC only forming part of unlawful assembly is

sufficient and the individual role and/or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to either of the respondents except that they were armed with weapons and therefore, they cannot be added as accused is unsustainable. The Learned trial Court and the High Court have failed to exercise the jurisdiction and/or powers while exercising the powers under section 319 CrPC.

39.Now so far as the submission on behalf of the private respondents that though a common judgment and order was passed by the High Court in CRR No.3238 of 2018 at that stage the appellant herein did not prefer appeal against the impugned judgment and order passed by the High Court in CRR No.28 of 2018 and therefore this Court may not exercise the powers under Section Article 136 is concerned the aforesaid has no substance. Once it is found that the Learned trial Court as well as the High Court ought to have summoned the private respondents herein as additional accused, belated filing of the appeal or not filing the appeal at a relevant time when this Court considered the very judgment and order but in CRR No.3238 of 2018 cannot be a ground not to direct to summons the private respondents herein when this Court has found that a prima facie case is made out against the private respondents herein and they are to be summoned to face the trial.

40.Now so far as the submission on behalf of the private respondents that though in the charge-sheet the private respondents herein were put in column no.2 at that stage the complainant side did not file any protest application is concerned, the same has been specifically dealt with by this Court in the case of Rajesh (Supra). This Court in the aforesaid decision has specifically observed that even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial Court to summon other persons as well as who were named in the FIR but not implicated in the

charge-sheet has gone, in that case also, the court is still not powerless by virtue of section 319 CrPC, 1973.

41. Similarly, the submission on behalf of the private respondents herein that after the impugned judgment and order passed by the High Court there is a much progress in the trial and therefore at this stage power under section 319 CrPC, 1973 may not be exercised is concerned, the aforesaid has no substance and cannot be accepted. As per the settled preposition of law and as observed by this Court in the case of Hardeep Singh (Supra), the powers under section 319 CrPC, 1973 can be exercised at any stage before the final conclusion of the trial. Even otherwise it is required to be noted that at the time when the application under section 319 CrPC, 1973 was given only one witness was examined and examination-in-chief of PW1 was recorded and while the cross-examination of PW1 was going on, application under section 319 CrPC, 1973 was given which came to be rejected by the Learned trial Court. The Order passed by the Learned trial Court is held to be unsustainable. If the Learned trial Court would have summoned the private respondents herein at that stage such a situation would not have arisen. Be that as it may as observed herein powers under section 319 CrPC, 1973 can be exercised at any stage from commencing of the trial and recording of evidence/deposition and before the conclusion of the trial at any stage.

42. In view of the above and for the reasons stated above the impugned judgment and order passed by the High Court and that of the Learned trial Court dismissing the application under section 319 CrPC submitted on behalf of the complainant to summon the private respondents herein as additional accused are unsustainable and deserve to be quashed and set aside and are accordingly quashed and set aside. Consequently the application submitted on behalf of the complainant to summon the private respondents herein is hereby allowed and the Learned trial Court is directed to summon the private respondents herein to face the

trial arising out of FIR No.477 dated 27.07.2016 in Sessions Case No.362 of 2016 for the offences punishable under Sections 302, 307, 341, 148 & 149 IPC. However, it is specifically observed that the observations made hereinabove are only prima facie for the purpose of exercising the powers under section 319 CrPC and the Learned trial Court to decide and dispose of the trial in accordance with the law and on its own merits and on the basis of the evidence to be laid before it.”

(emphasis supplied)

In **Sagar Versus State of U.P. & another etc. 2022(2) R.C.R.**

(Criminal) 344, held as under:-

“9.The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above 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. The learned Single Judge of the High Court has even failed to consider the basic principles laid down by this Court while invoking Section 319 of the Code, which has been considered by the learned trial Judge under its order dated 30 th January, 2018.”

(emphasis supplied)

In **Sukhpal Singh Khaira Versus The State of Punjab, 2023(1)**

SCC 289, held as under:-

“32.We have also kept in view the point by point analysis of the object and power to be exercised under Section 319 of CrPC, as has been indicated in para 34 of Manjit Singh vs. State of Haryana and Others (2021) SCC Online SC 632.”

(emphasis supplied)

13. A reading of the aforementioned judgments would show that firstly, the crucial test to be applied for the purposes of summoning of a prospective accused is that there must be more than a *prima facie* case as exercised at the time of framing of charge but short of satisfaction to an extent that the evidence, if it goes unrebutted would lead to conviction. This is on account of the fact that charges already stand framed against the accused facing Trial and therefore, the standard of proof for the purposes of summoning of an accused who had been initially exonerated ought to be slightly higher. However, clearly, there is no requirement that the evidence available on the file must be such that would reasonably lead to conviction.

Secondly, the Court while exercising powers under Section 319 Cr.P.C. is not required or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the course of Trial.

14. In the instant case, the petitioners have been categorically named in the FIR along with the accused facing Trial and the allegations against all the accused including the petitioners is of causing injuries to the deceased. No reason whatsoever has been provided in the Report under Section 173(2) Cr.P.C. for the exoneration of the petitioners. At this stage, the evidence cannot be appreciated threadbare so as to exculpate the accused. In fact, from the evidence available on record, it appears that the petitioners could be tried together along with accused already facing Trial and it cannot be held that there were no reasonable prospects of the conviction of the petitioners.

15. In view of the aforementioned discussion, I find no merit in the present petitions and therefore, they stand dismissed.

16. However, the observations made hereinabove are only for the purposes of deciding these revision petitions and the Trial Court is free to adjudicate upon the matter on the basis of the evidence led before it uninfluenced by any such observations made herein.

17. The petitions stand disposed of.

(JASJIT SINGH BEDI)
JUDGE

16.12.2023

JITESH

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