

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2141-2023 (O&M)
Date of Decision: 22.09.2023

Karuna Nand Giri

. . . . Petitioner

Vs.

State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Sukhdeep Singh Bhinder, Advocate, for the petitioner.

DEEPAK GUPTA, J.

This revision is directed against the order dated 10.07.2023 passed by Id. JMIC, Barnala, dismissing the application of the petitioner under Section 319 CrPC.

2. Perusal of the paper-book reveals that FIR No.128 dated 29.07.2019 was registered at Police Station Barnala under Sections 452/323/506/427/149 IPC on the statement of petitioner-Karuna Nand Giri, as per which he had a petty dispute with his wife-Kirna Devi on 13.07.2018 leading to scuffle and some minor injuries caused on the body of both of them. It was alleged that Kirna Devi left the house and then brought 12-15 persons from the village, who gave beatings to him and his daughter. Inquiry was conducted and names of Buta Singh s/o Sher Singh, Dara Singh s/o Jang Singh and Bhura Singh s/o Inder Singh emerged to be assailants, who had entered the hermitage of the complainant along with 10-12 persons and had given beatings to him and his daughter Rukmani Devi.

3. After conducting the investigation, challan was filed against Buta Singh and another. After the statement of complainant Karuna Nand

Giri was recorded during trial, application under Section 319 CrPC was moved to summon respondents No.2 to 9 i.e. Jagjit Singh, Jagsir Singh @ Kuldeep Singh, Gurmit Singh, Jaswant Singh, Gurjant Singh, Amandeep Singh, Sarabjit Singh and Mandeep Singh as additional accused to face trial. It was contended that these persons had also accompanied the assailants at the relevant time and their names have been disclosed by the petitioner in his testimony before the Court. The application, so moved by the petitioner, was dismissed by Id. Magistrate vide impugned order dated 10.07.2023.

4. Assailing the aforesaid order, it is contended by Id. counsel that while deposing before Id. JMIC, Barnala, petitioner had specifically named respondents No.2 to 9 to be amongst the assailants and that he had informed the police regarding the involvement of them in beating him and his daughter and so, the trial Court committed error in not allowing the application under Section 319 CrPC.

5. After hearing Id. counsel and perusing the paper-book, this Court finds no merit in the petition.

6. The issue regarding the scope and extent of power of the Court to arraign any person as an accused during the course of inquiry or trial in exercise of the power under section 319 Cr.P.C. has been set at rest by a Constitutional Bench of Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab, 2014 (1) R.C.R. (Criminal) 623** followed by another pronouncement in **Babubhai Bhimabhai Bokhiria and Another Vs. State of Gujarat and others, 2014 (2) RCR (Criminal) (SC) 915**.

7. After reviewing various precedents, Hon'ble Apex Court summarized the legal position in **Hardeep Singh's case (cited supra)** in the following words:

"Power under Section 319 Cr.P.C. is a discretionary and an extraordinary 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.

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."

8. After referring to aforesaid authority of Constitutional Bench, Hon'ble Supreme Court held in **Babubhai Bhimabhai Bokhiria's case (cited supra)** as under:

"Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher."

9. The above said issue was also considered by the Hon'ble Supreme Court in Criminal Appeal No. 397 of 2022 (Arising out of SLP (Crl) Nos. 7373 of 2021) titled '**Sagar Vs. State of UP & Another, Law finder Doc Id # 1955471**', decided on 10.03.2022, wherein the Hon'ble Supreme Court referred to **Hardeep Singh's case (supra)** and held that crucial test, which has to be applied, is one which is 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 goes un-rebutted, would lead to conviction.

10. In the present case, neither in the FIR (Annexure P1) nor in the statement of the petitioner under Section 161 CrPC, respondents No.2 to 9 have been named to be the amongst assailants. So much so, petitioner did not even state at the time of lodging of the FIR that he could identify the assailants. Involvement of respondents No.2 to 9 in the crime has been disclosed for the first time during his testimony before the Court, as rightly noticed by the trial court.

11. In view of the aforesaid circumstances, ld. Trial Court did not commit any error in dismissing the application under Section 319 CrPC because the case does not fall within the guidelines provided in **Harjit Singh's Case** that there should be more than *prima facie* case against respondents No.2 to 9 so as to summon them as additional accused.

12. Consequently, holding the present petition to be devoid of any merit, the same is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

22.09.2023

Vivek

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No