

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

CRM-M-54433-2021 (O&M)
Date of decision: 17.08.2023

Amandeep Singh

....Petitioner

Versus

State of Punjab and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Yagsimant Attri, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

Mr. B.S. Jatana, Advocate for the complainant-respondent No.2

AMAN CHAUDHARY. J.

1. In the present petition filed under Section 482 of Code of Criminal Procedure, 1973 ("CrPC"), the accused-petitioner had called in question the judgment dated 29.09.2021, Annexure P-11, passed by Additional Sessions Judge, Sangrur and the order dated 10.01.2020, Annexure P-10, passed by Judicial Magistrate 1st Class, Moonak, vide which application filed under Section 319 CrPC seeking summoning of petitioner as additional accused to stand the trial was allowed.

2. Learned counsel would contend that the dispute relates to a property that was sold by the son of the complainant to the father of the petitioner, with which the petitioner has no concern whatsoever, moreso that for most part of the year, he stays away from his home, being an army personnel. He being in a government job has been implicated to exert pressure on his father. The said house fell in the share of Satwant Singh, through a family settlement, as has been mentioned in the inquiry conducted by the Superintendent of Police, Annexure

P-6, who had thus, the right to sell the same. A suit was filed by the father of the petitioner seeking permanent injunction against the complainant wherein, said Satwant Singh, had got his statement recorded on 25.05.2017, and deposed that on 15.05.2017 he had handed over the possession of the house to Nirbhay Singh, Annexure P-2, which thus was not in their possession at the time of lodging of the FIR. Having found that the petitioner had no concern with the agreement and sale of the house and the alleged incident, he was rightly kept in column No.2 by the police. Subsequently, even the application filed by the complainant, under Section 190 (1) (c) CrPC for summoning the petitioner, was dismissed by the trial Court vide order dated 18.09.2018, Annexure P-7. Thereafter, partial statement of the complainant-respondent No.2 was recorded on 04.04.2019, Annexure P-8, wherein no allegation as mentioned in the FIR was levelled but for stating that the petitioner along with his father had restrained her from entering the house and tried to take possession of the same, whereas in the FIR, it was mentioned that the petitioner and his father were already in possession. Without conducting the cross-examination of the complainant, the petitioner was summoned vide order dated 10.01.2020, Annexure P-10. Reliance is placed on **Hardeep Singh vs. State of Punjab and Others**, 2014 (3) SCC 92.

3. Learned State counsel alongwith the counsel for the complainant-respondent No.2 while supporting the impugned orders submit that the Courts below have rightly passed the orders, since there are specific allegations against him in the FIR of having stolen the household articles as also beating the complainant and tearing her clothes.

4. Heard

5. For the purpose of adjudicating the present matter, it would be

appropriate to make a reference to the provision of Section 319 CrPC, which reads thus:

“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 subsection (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.”

6. It is imperative to make a reference to the order dated 10.01.2020 passed by the trial Court to find out reasons that weighed with it to summon the petitioner, which reads thus:

“An application for exemption from personal appearance of accused Nirbhai Singh moved which is considered and allowed for today only due to the reasons mentioned therein.

Arguments on application filed by the prosecution under Section 319 Cr. P.C. heard. In the application, it is submitted that the complainant had clearly mentioned about the participation of accused Amandeep Singh in the offence, whose name was duly mentioned in the FIR, for which he is liable to be summoned as an additional accused.

I have considered the arguments put forth by prosecution.

The accused Amandeep Singh was duly named in the FIR and on the basis of some enquiry conducted by the police he was declared innocent and his name was mentioned in the column no.2 of the report under Section 173 Cr. P.C. The

complainant when examined as PW-1 has unequivocally named Amandeep Singh as an accused. Keeping in view the said statement and the allegations, made in the FIR, there is a strong case to proceed against Amandeep Singh in the present case. Accordingly, the application is allowed. Let accused Amandeep Singh be summoned as an additional accused for 06.03.2020.”

7. It would be also profitable to recapitulate the established principles as enunciated by the Constitution Bench of Hon’ble The Supreme Court in **Hardeep Singh** (supra), while explaining the ambit and the spirit underlying the enactment of the provision of Section 319 CrPC and the doctrine that must be used as a beacon light. Paras relevant read thus:

“95. 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 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two- Judge Bench of this Court in *Vikas v. State of Rajasthan*, held that on the *objective satisfaction* of the court a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

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105. 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.

106. 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.”

8. In **Brijendra Singh & Ors vs. State of Rajasthan**, (2017) 7 SCC 706, Hon’ble The Supreme Court had set aside the summoning order while relying on the judgment in the case of **Hardeep Singh** (supra) and deliberating the degree of satisfaction that is required for invoking the powers under Section 319 CrPC and observed that such power should be exercised in circumstances where the trial Court finds that some “evidence” exists against a person on the basis of which it can be gathered that he appears to be guilty of the offence, thus should be summoned to face trial. The term “evidence” in this context pertains to the material presented during the trial. Insofar as the evidence collected by the Investigating Officer at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by court to invoke the power under Section 319 CrPC. Apart from being discretionary, the power under this Section is also an extraordinary one, thus has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. Para relevant of the aforesaid judgment reads thus:

“15. This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so- called verbal/ocular version. Thus, the ‘*evidence*’ recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which

suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.”

9. As in the afore-referred judgment, even in the case at hand, the Superintendent of Police, during the course of its investigation had conducted an inquiry wherein as regards the petitioner is concerned, it was observed and concluded in the report dated 04.01.2018, Annexure P6, as follows:

“It has come into his investigation that said Swaranjit Kaur had two sons namely Satwant Singh and Beant Singh they had effected a family settlement as a compromise. In the family settlement the house within the lal lakir fell into the share of Satwant Singh and in lieu of that, Satwant Singh had to clear the family debt and Satwant Singh was made exclusive owner of this house. Nothing is mentioned in the family settlement that Satwant Singh was not competent to sell the house. As such, Satwant Singh under his full senses had sold his house to Nirbhay Singh. Amandeep Singh (Fauji) had come to village on leave to look after his wife Harman Kaur because she delivered a child from 04.04.2017 to 03.05.2017 and after completion of the leave he returned to his duty. Amandeep Singh again came on leave from 12.05.2017 to 27.05.2017 had come to village as his wife had delivered a child and he had come to look after newly born baby and his wife. Then he returned to his duty after completion of the leave period from 12.05.2017 to 27.05.2017. He did not interfere with regard to sale of house while he was in village in the leave period. Above said Amandeep Singh (Fauji) had absolutely no concern with the house. Neither he had created a dispute with regard to the house in question nor he had gone to tehsil complex Lehra on 15.05.2017 with regard to sale and purchase of house nor Amandeep Singh (Fauji) had signed the agreement of sale executed on 15.05.2017 in tehsil complex Lehra. In the

agreement, only Nirbhay Singh is described as the purchaser because only Nirbhay Singh had purchase this house. Complainant Swaranjit Kaur deliberately want to involve Amandeep Singh (fauji) in this case because he is doing government job in the Army. SHO PS Lehra / DSP Sub Division Moonak in their inquiry had found Amandeep Singh as innocent in this FIR No. 107 dated 20.07.2017 under section 420/379/506/ 120-B Indian Penal Code PS Lehra. If accepted, then Amandeep Singh son of Nirbhay Singh be declared as innocent in this cas and the proceedings be initiated against remaining accused in accordance with law and SHO Lehra be ordered accordingly.”

10. Hon’ble The Supreme Court in **Juhru vs. Karim**, (2023) 5 SCC 406, had also observed and held that, “It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima facie case is sine quo non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material is, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked.”

11. Encapsulating the essence of the provision of Section 319 CrPC while relying on **Hardeep Singh** (supra) in **Sagar vs. State of UP**, 2022(6) SCC 389, Hon’ble The Supreme Court observed that, “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 30-01-2018.”

12. The trial Court while passing the impugned order, went by the deposition of complainant, with no other material to corroborate the same, while on the other hand, there was a detailed inquiry by Superintendent of Police (Investigation) in favour of the petitioner, regarding which nothing has been observed that it was either compromised or lacked credibility. Even in the statement of PW-2, Parmatma Singh, only Nirbhay Singh was named with no reference being there to the petitioner. No strong and cogent evidence appears to be on record to have summoned the petitioner, thus, even the Revisional Court has erred in affirming it.

13. The orders impugned fall short of qualifying the test as per the exposition of law referred to above and deserve to be set aside.

14. As a sequel thereto, the present petition is allowed. The impugned orders dated 10.01.2020 and 29.09.2021 are hereby set aside.

(AMAN CHAUDHARY)
JUDGE

August 17, 2023

M.Kamra

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No