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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2204-2023 (O&M)

Date of decision: 11.10.2023

Sirajuddin @ Sirajudeen

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Mohammad Arshad, Advocate for petitioner.

Ms. Svaleen Jaswal, Addl. A.G. Haryana.

ARUN MONGA, J. (ORAL)**CRM-41241-2023**

Allowed as prayed for subject to all just exceptions.

Main case (O&M)

Petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for quashing impugned order dated 17.08.2023 passed by learned Additional Sessions Judge, Nuh, whereby application filed by petitioner-complainant through prosecution for summoning respondents No.2 to 5 as additional accused was declined in case FIR No.538 dated 24.10.2019, under Sections 323, 452, 302/ 34 of IPC and Section 25 of Arms Act, registered at Police Station Tauru despite the fact that respondents No.2 to 5 were specifically named in the FIR, statement of complainant as PW-1 recorded before learned trial Court.

2. As per the FIR, it is submitted that petitioner-Sirajuddin son of Babudin cast Qureshi, is a resident of Sikarpur police station Tauru. A line of drinking water was lying inside the village. At around 10:30 a.m. in the morning, Abdul Gani son of Sakur was digging the government line of water so that the drinking water could not go forward. Petitioner's father opposed it, upon which, Abdul Gani called the family members, namely, Waseem @ Bolar, Yunus @ Kala, Mukeem @ Mukki and his wife Amna, daughter Waseema or son Waseem's wife, Nasim who in furtherance of their

common intention reached the spot with their respective weapons. They came to their house because of fear and as soon as Abdul Gani came, he fired shot directly at Anish with his gun with intent to kill him and Yunus @ Kala also fired a gunshot at Anish and Mukeem had hit with Sariya (iron rod) on petitioner's father's mouth, Aimna, Wasim, Naseem having Pharsa (axe) and Dandas in their hands, inflicted injuries to petitioner and his mother Dholi. They raised alarm. On hearing the noise Jilshad s/o Ismail, Mazid s/o Sakur and Umardin s/o Guldin resident Doha reached the spot. On seeing them accused ran away. They saw that petitioner's brother Anish had died on the spot.

3. Learned counsel for petitioner contends that vide impugned order dated 17.08.2023, learned trial Court dismissed the application filed by the prosecution under Section 319 Cr.P.C.

4. On the other hand, learned State counsel opposes the petition and supported the impugned order passed by learned trial Court.

5. I have heard learned counsel for the parties and gone through the case file.

6. This Court had an occasion to frame certain principles regarding exercise of power under Section 319 Cr. P.C. Reference may be had to my judgment rendered in **Kamaljit Singh versus State of Punjab and others**¹ wherein following observations were made:

“6. No doubt, Section 319 of the Cr. P.C. allows a court to add any person, who is not an accused before the court, as an accused in an ongoing trial if it appears from the evidence that such person has committed an offense. However, exercise of said power is governed by certain principles, which, inter alia, are as below:

i. *Prima facie evidence:* The court must have prima facie evidence against the person sought to be added as an accused, i.e. some material on record which, if unrebutted, could lead to the conclusion that the person has committed the offense.

ii. *Connection to the offense:* The court must find a clear connection between the person sought to be added and the offense. This connection could be established through witness statements, documentary evidence, or any other relevant material that links the person to the commission of the offense.

iii. *Judicial discretion:* The power conferred under Section 319 is discretionary and should be exercised judiciously by the court. The court must consider all the facts and circumstances of the case and exercise its discretion based on sound judicial principles.

iv. *Fair opportunity: The person sought to be added as an accused should be given a fair opportunity to present their case and defend themselves against the charges.*

v. *Sufficiency of evidence: The court should assess the sufficiency of evidence against the person sought to be added. The evidence should be substantial and reliable enough to create a strong probability of the person's involvement in the offense.*

vi. *Stage of trial: The court can exercise its power under Section 319 at any stage of the trial, whether it is during the inquiry, trial, or even after the judgment has been pronounced. However, the power should be exercised cautiously, especially when the trial is at an advanced stage, to ensure fairness and avoid prejudice.*

Aforesaid principles ensure that the power under Section 319 is used judiciously and in accordance with the principles of natural justice, while allowing the court to effectively deal with situations where additional persons are found to be involved in the commission of an offense.”

7. Reference may also be had to a Constitution Bench judgment of Apex Court in **Hardeep Singh versus State of Punjab and others**². Scope of Section 319 Cr.P.C. for the purpose of summoning additional accused was considered therein and five questions were framed to enunciate the broad principles. Supreme Court has addressed various questions framed by it, as under:

“110. We accordingly sum up our conclusions as follows:

Question Nos. I & III

Q.I 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.

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.

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. The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove."

8. Impugned order dated 17.08.2023 passed by learned Additional Sessions Judge, Nuh is, *inter alia*, premised on the following reasoning:

9. "In this case though the name of proposed accused are there in the FIR as well as in statement of witnesses under Section 161 of Cr.P.C. but the police after due verification has given clean chit to them. The deceased Anees had died due to firearm injury. It has nowhere been alleged that the proposed do have firearm. Moreover, the complainant had given the version regarding participation of the proposed accused in the incident and use of the alleged weapon. Therefore, this Court has convinced with the investigation done by the police. It has also

been considered that the Hon'ble High Court in Ganesha's case (supra) while giving observation on application under Section 319 of Cr.P.C. that version of FIR and the prosecution witnesses cannot be ipso-facto relied upon unless there are cogent evidence which prima-facie indicate the complexity of the proposed accused. Therefore, in view of the aforesaid observation there is no prima-facie against the accused. Accordingly, application under Section 319 of Cr.P.C. is dismissed. Papers be tagged with main case file."

9. On a careful reading of Section 319 of the Code of Criminal Procedure, I am of the considered opinion that it would be attracted only and if after submission of final investigation report by the police to the Court, it appears from evidence subsequently recorded in the course of inquiry into and trial of an offence that any person not being the accused has committed any offence for which such person could be tried together with the accused and the court may then proceed against such person for the offence which he appears to have committed. In present case, it cannot be said that this condition is satisfied.

10. In the premise, I am of the opinion that impugned order has been passed based on appreciation of facts, evidence and material available on record, as also after correct interpretation of provisions of Section 319 Cr.P.C., which deserves no interference by this Court.

11. As an upshot, the instant revision is dismissed.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

11.10.2023
Jyoti Thakur

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No