

CRR-2808-2019(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRR-2808-2019 (O&M)****Date of decision: July 07, 2023**

Kamaljit Singh

....Petitioner

versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. J.S. Thakur, Advocate for petitioner.

Mr. Dhruv Dayal, Additional AG Punjab.

ARUN MONGA, J. (ORAL)**CRM-33199-2019**

Allowed as prayed for, subject to all just exceptions.

Main case (O&M)

Challenge herein is to an order dated 06.08.2019 passed by learned Additional Sessions Judge, Jalandhar, whereby, an application, filed by the petitioner/ complainant under Section 319 of Code of Criminal Procedure, 1973 ('Cr. P.C.' for short) for summoning respondents No.2 to 4 to face the trial as additional accused, was dismissed.

2. Per prosecution version, on 29.06.2014 at about 9:00 p.m., when victim/ injured Kamaljit Singh along with his friends were at a village fair at Bhardwajia, accused, namely Ajay Sehdev, Binda alias Khota, Sunny alias Bhedu and Money armed with base ball bats also reached there. They were accompanied with 3-4 more unknown persons who were armed with swords. Money assaulted Ajay Kumar, Sunny gave a *datar* blow on the arm of Ajay Kumar and Ajay Sehdev pulled out a pistol and fired a shot aiming at Kuljinder alias Kinda. He then fired another shot on Narinder Singh alias Ninda. He attempted to shoot

complainant, but it missed. An FIR bearing No.50 dated 30.06.2014 under Sections 307, 323, 148/149 IPC and Sections 25 and 27 of Arms Act, 1959 was registered in this regard at Police Station, Jalandhar City.

3. Learned counsel for petitioner submits that petitioner had specifically named respondents No.3 and 4 in the FIR. Specific role was attributed to them. Notwithstanding, in the enquiry/investigation, they have not been implicated. During investigation, *alibi* of private respondents was accepted, which could not have been done without putting them to trial.

4. Counsel for petitioner argues that MLR shows that two injuries were suffered by victim Ajay Kumar. He had attributed those to respondents No.3 and 4, they ought to have been therefore summoned as additional accused to face trial. Likewise, since respondent No.2-Varinder Kumar alias Kinda was also allegedly present at the time of occurrence and was specifically named. Learned trial Court thus committed grave error in not summoning them under Section 319 Cr.P.C.

5. I have heard learned counsel for petitioner and gone through the record.

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 Constitution Bench judgment of Apex Court in **Hardeep Singh versus State of Punjab and others**¹. 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. In the present case, learned trial Court, while dismissing the application under Section 319 Cr. P.C. of the petitioner for summoning respondents No.2 to 4, has rightly observed in paras-8 and 9 thereof, which read as under:

“8. In view of the law discussed above, this court feels that summoning cannot be done in mechanical manner. Unless complainant/ prosecution agency can give reasonable material to make departure from these findings of police, summoning of these persons as accused under Section 319 Cr. P.C cannot be made. As already observed, if such course is adopted, then investigation shall have no meaning. No doubt, sufficient power vests with the court to summon any person as additional accused, who appears to be involved in the occurrence as accused. But it cannot be done at mere asking of complainant. Otherwise, it shall virtually amount to handing over reins of trial to complainant, ignoring the police which act as neutral investigating agency.

9. The complainant had alternative course of filing private complaints for seeking those remedies, for which a different procedure is adopted. But for getting success in application under Section 319 Cr.P.C., reasonable material should have been produced and sufficient evidence should have been led as to why investigating

conclusions should not be believed. The evidence brought on record by examination of PW-1Kamaljit Singh is not clinching to give any such impression. Accordingly, this court is of the opinion that no ground for summoning Varinder Kumar @ Binda, Sunil @ Sunny and Manpreet Singh @ Mani as accused is made out. Application under Section 319 Cr. P.C is accordingly held to be without any merits and is hereby dismissed.”

9. Considering the facts and circumstances of the current case and having gone through the order under challenge, I believe that the trial court has passed an order that is both fair and lawful. The court has provided adequate justification for its decision, including a thorough discussion of applicable legal precedents. As such, there is no illegality or irregularity in the impugned order.
10. As an upshot, the instant revision lacks merits and is dismissed.
11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 07 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No