

246

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

CRR-2773-2019

Date of Decision: 05.09.2023

Amar Nath Dhawan and others

..... Petitioners

Versus

State of Punjab

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Salil Dev Singh Bali, Advocate,
for the petitioners.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

Mr. P.S. Ahluwalia, Advocate
for the complainant.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present revision petition has been filed challenging the impugned order dated 05.10.2019 passed by the learned Additional Sessions Judge, Ludhiana whereby the application under Section 319 of the Code of Criminal Procedure which was filed by the prosecution for summoning the petitioners has been allowed and they have been summoned to face trial.

2. The facts of the present case are that an FIR under Sections 307, 323 & 34 IPC was lodged at the instance of Sonu vide Annexure P-1 dated 28.04.2018 by alleging that the complainant and his brother, namely, Vivek Sharma were having tea together in their house and their father, namely, Kishore Chand Sharma said that he was going to street No.7 in the house of one Parmod and asked them to come there in the house of Parmod

after having tea as they wanted to discuss something. Thereafter, the father of the complainant went towards the house of one Parmod by foot. Thereafter, the complainant and his brother, namely, Vivek Sharma also took tea and went towards the house of the aforesaid Parmod on motorcycle. At about 6:45 PM, when they were at some distance beyond the house of Parmod, then they saw Ashu, Manu, Amarnath, Usha Rani w/o Amarnath, Sunil and Amarjeet Pappu were giving beatings to his father. The aforesaid Manu was armed with wooden bat and within his presence, he gave bat blow on the back of the head of his father with an intention to murder him and his father fell down on the ground. Thereafter, Manu took bat from Ashu and again gave bat blow on the head of his father. While his father was lying on the ground, Amarnath, Usha Rani, Sunil and Amarjeet Pappu gave kick blows to his father. One more person, namely, Harjinder Pal Gogna was standing near them who said in loud voice that murder him and he will manage. The complainant and his brother stopped the motorcycle and raised alarm and on hearing the alarm, people from the street gathered there and all the accused persons ran away towards the main road of Kot Mangal Singh while hurling abuses. Thereafter, the father of the complainant felt unconscious and conveyance was arranged and he was admitted in Civil Hospital, Ludhiana and due to injuries on his head, after examined by the doctor, referred to CMC, Ludhiana.

3. During the course of investigation, the Police presented challan against only three persons, namely, Manu @ Manish Dhawan, Ashu, @ Ashish Dhawan and Usha Rani, but did not present the challan against the remaining persons who were named in the FIR. Thereafter, statement of the

injured, namely, Kishore Chand Sharma, who is the father of the complainant, was recorded as PW-1 and that of the complainant himself as PW-2 and thereupon on the basis of the examination-in-chief the prosecution moved an application under Section 319 Cr.P.C. for summoning the remaining five persons as additional accused since role was attributed to them as well but were wrongly exonerated by the police. Thereupon, the learned trial Court vide impugned order dated 05.10.2019, allowed the application under Section 319 Cr.P.C qua four accused, who are the petitioners in the present case, namely, Amar Nath Dhawan, Amarjeet Pappu, Sunil Kumar and Harjinder Pal @ Gogna but declined to summon the fifth person, namely, Gaurav Arora.

4. Since the aforesaid Gaurav Arora was not summoned by the present impugned order, the complainant also filed a separate petition before this Court on the ground that the application qua the aforesaid Gaurav Arora has been wrongly dismissed and he ought to have been summoned. However, during the course of arguments, the learned counsel for the complainant has already withdrawn the aforesaid petition at this stage by an order of even date i.e. today.

5. Learned counsel appearing on behalf of the petitioners, who have been summoned under Section 319 Cr.P.C. has submitted that the impugned order is erroneous because there is no proper application of mind by the learned trial Court and the order does not satisfy the test laid down by the Constitutional Bench of the Hon'ble Supreme Court in “**Hardeep Singh Vs. State of Punjab and others**”, 2014(3) SCC 92, because there was no recording of *prima facie* satisfaction pertaining to the present four

petitioners. He further submitted that the injuries which have been caused to the injured are not attributable to the petitioners.

6. Learned counsel for the petitioners further submitted that all the four petitioners were present on the spot and there is no dispute with regard to the same but no overt act has been attributable to them and that is the reason as to why they were exonerated by the police and when the trial Court was to consider the application under Section 319 Cr.P.C., then the action of the present four petitioners was required to be considered and more than *prima facie* satisfaction was required to be recorded in view of the aforesaid judgment passed by the Hon'ble Supreme Court in **Hardeep Singh's case (Supra)**, which has not been done in the present case and therefore, the aforesaid order of the learned trial Court is liable to be set aside.

7. On the other hand, Mr. Sarabjit Singh Cheema, learned DAG, Punjab and Mr. P.S. Ahluwalia, learned counsel for the complainant have submitted that the present petition is liable to be dismissed on the ground that the parameters laid down by Hon'ble Supreme Court in **Hardeep Singh's case (Supra)**, have been fully satisfied in the present case. They further submitted that it is a case where a perusal of the FIR itself would show that it has been so stated by the complainant that his father was beaten up by the persons, whose name have been mentioned in the FIR which includes all the four present petitioners, and therefore, clear language of the FIR itself would suggest that a direct role has been attributable to the present petitioners and furthermore when they were deposing before the Court as PW-1 and PW-2, they again reiterated the same and rather had also

stated that so far as petitioner Nos.1, 2 & 3 are concerned, they had given beatings to his father and so far as petitioner No.4 is concerned, he had raised *Lalkara* and he incited the remaining accused and had stated in loud voice that the father of the complainant be murdered. Consequently, father of the complainant had suffered grievous injuries on his head as well and was admitted to Civil Hospital and was thereafter referred to CMC, Ludhiana. They further submitted that so far as the impugned order which has been passed by the learned trial Court, which is under challenge in the present petition is concerned, it fully satisfies the test laid down by the Hon'ble Supreme Court in *Hardeep Singh's case (Supra)*. While referring to the aforesaid order, they submitted that the learned trial Court discussed the entire issue right from Para No.3 itself, wherein the role of the present petitioners has been discussed in detail as per the FIR and as per the statements and thereafter, the law on the issue has also been discussed. Thereafter, in Para No.8 of the impugned order, the learned trial Court came to the conclusion that it appears that the present four petitioners have committed the offence along with the other accused. Learned counsels further submitted that the conclusion made by the learned trial Court vide Para No.8 are based upon the entire discussion which has been made by the learned trial Court right from Para No.3 onwards and therefore, it cannot be said that the learned trial Court has not applied its mind and was not *prima facie* satisfied with regard to the role.

8. Learned counsels further submitted and referred to another judgment of the Hon'ble Supreme Court in "*Manjeet Singh Vs. State of Haryana and others*", *2021 SCC Online SC 632* and the latest judgment of

the Hon'ble Supreme Court in "**Sandeep Kumar Vs. State of Haryana and another**" **2023 SCC Online SC 888**, to contend that when a person is shown to be a part of the unlawful assembly and even if no overt act is alleged to have been committed by him, still it cannot be said that he should be exonerated only on this issue and rather the accused has to face the trial along with the other accused qua whom the overt act was attributable. They referred to the relevant para of the aforesaid judgment passed by the Hon'ble Supreme Court in **Manjeet Singh's case (Supra)** which is reproduced as under:-

"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 1973, 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 1973.”

9. Learned counsels also referred to Para Nos.12 to 14 of the judgment passed by the Hon’ble Supreme Court in ***Sandeep Kumar’s case (Supra)*** which is reproduced as under:-

“12. The reasoning given by the High Court, cannot be accepted at the stage of consideration of application under Section 319 Cr.PC. The merits of the evidence has to be appreciated only during the trial, by cross examination of the witnesses and scrutiny of the Court. This is not to be done at the stage of Section 319, though this is precisely what the High Court has done in the present case. Moreover, the High Court did not appreciate the important fact that the charges being faced by the accused were under Sections 458, 460, 323, 285, 302, 148 and 149 of IPC. Thus, one of the charges being Section 149, which is of being a member of an unlawful assembly, for attracting the offence under Section 149 IPC, one simply has to be a part of an unlawful assembly. Any specific individual role or

act is not material. [See : 2021 SCC OnLine SC 632- Manjeet Singh v. State of Haryana & Ors., Para 38].

13. *A plain reading of Section 149 IPC (read with Section 141 IPC), makes it clear that no overt act needs to be assigned to a member of an unlawful assembly. “Even if no overt act is imputed to a particular person when the charge is under Section 149 IPC, the presence of the accused as part of an unlawful assembly is sufficient for conviction”. [See : Yunis alias Kariya v. State of Madhya Pradesh, AIR 2003 SC 539]*

14. *The entire purpose of criminal trial is to go to the truth of the matter. Once there is satisfaction of the Court that there is evidence before it that an accused has committed an offence, the court can proceed against such a person. At the stage of summoning an accused, there has to be a prima facie satisfaction of the Court. The evidence which was there before the Court was of an eye witness who has clearly stated before the Court that a crime has been committed, inter alia, by the revisionist. The Court need not cross-examine this witness. It can stop the trial at that stage itself if such application had been moved under Section 319. The detail examination of the witness and 10 other witnesses is a subject matter of the trial which has to begin afresh. The scope and ambit of Section 319 CrPC has been discussed and dealt with in detail in the Constitution Bench judgment of Hardeep Singh v. State of Punjab and Others reported in (2014) 3 SCC 92 where it said:*

“12. Section 319 CrPC springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and

the spirit underlying the enactment of Section 319 Cr. PC.

13. It is the duty of the court to do justice by punishing the real culprit. 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.”

15. In Hardeep Singh (supra), this court further said that the Court only has to see at the state of Section 319, whether a prima facie case is made out although the degree of satisfaction has to be much higher.

“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 11 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.

16. In Para 106 it stated as under:

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 CrPC. In Section 319 CrPC the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” it 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 12 under Section 319 CrPC to form any opinion as to the guilt of the accused.”

10. I have heard learned counsel for the parties.

11. It is a case where on the basis of the complaint made by one Sonu Sharma-Complainant, the present FIR was lodged. A perusal of the FIR would show that specific allegations have been levelled against all the accused persons, who have been mentioned in the FIR including the present four petitioners in which it has been so specifically stated that the beatings were given by all the accused. Thereafter, during the course of trial in the evidence when the complainant and his father, who was injured, they also deposed as PW-2 and PW-1, respectively and after their examination-in-chief, the prosecution moved an application under Section 319 Cr.P.C. for summoning the present four petitioners as additional accused. The presence of the present four petitioners is not in dispute nor the same has been

disputed by the learned counsel for the petitioners. Rather a perusal of Para No.2(v) of the present petition, it has been so stated by the petitioners themselves that when the inquiry was conducted by the Police, it has been found that petitioners though were present at the spot yet have no role to play in the alleged occurrence. Therefore, so far as per the presence of the petitioners on the spot is concerned, the same has not been disputed as per the inquiry conducted by the police.

12. However, the learned counsel for the respondent have referred to the aforesaid judgments passed by the Hon'ble the Supreme Court in *Sandeep Kumar's case (Supra)* and *Manjeet Singh's case (supra)* to contend that even when in those cases, where no overt act has been attributable to any of the co-accused and they are part of the unlawful assembly, still it cannot be said that no offence has been committed by them. In the present case, the contents of both the FIR and the statements PW-1 and PW-2 would show that rather direct attribution has been made to the present petitioners qua beatings and their presence as per the inquiry of the Police itself is not disputed. The learned trial Court has discussed the facts of the case and thereafter by referring to the judgments of the Hon'ble Supreme Court has come to the conclusion that it appears that the petitioners have committed the offence along with the other accused. Therefore, even if the learned trial Court has not stated so in express terms that there is a *prima facie* satisfaction but from the discussion, the trial Court has come to the conclusion that it appears that the petitioners have committed the offence along with the other accused. Therefore, this Court is of the view that the test laid down by the Hon'ble Supreme Court in

Hardeep Singh’s case (Supra) remains satisfied.

13. In view of the above, no infirmity or illegality can be found in the impugned order passed by the trial Court for interference in the present revision petition. The petition is therefore dismissed.

05.09.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |