

CRR-2580 of 2022

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

CRR-2580 of 2022

Reserved on: 11.01.2023

Date of Pronouncement: 24.01.2023

Sanjay

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Ravinder Phogat, Advocate, for the petitioner.
Ms. Gaganpreet Kaur, AAG, Haryana.

NAMIT KUMAR, J.

This revision petition has been filed under Section 401 Cr.P.C. by the petitioner against the order dated 28.09.2022 passed by the Court of learned Additional Sessions Judge, Charkhi Dadri, vide which the application filed by the complainant under Section 319 Cr.P.C. for summoning the petitioner and Shubham as additional accused in case FIR No.233 dated 29.09.2019 under Section 323, 324, 307, 506 IPC read with Section 34 IPC and Section 25 of the Arms Act, registered at Police Station City Dadri, has been allowed.

It has been argued by learned counsel for the petitioner that the trial Court in a very casual manner has summoned the petitioner and Shubham as additional accused by considering the prima facie involvement of the petitioner and Shubham whereas any person can only be summoned as an additional accused if there is

CRR-2580 of 2022

overwhelming evidence against him. To support his contention, he has placed reliance upon a Constitution Bench judgment in ***Hardeep Singh v. State of Punjab and others, 2014(1) RCR (Criminal) 623.***

Per contra, learned State counsel contends that the impugned order summoning the petitioner is perfectly valid as the same has been passed keeping in view the involvement of the petitioner in the case.

I have heard learned counsel for the parties and perused the record.

Learned Additional Sessions Judge, Charkhi Dadri, while accepting the application of the complainant under Section 319 Cr.P.C. for summoning the petitioner and Shubham as additional accused has recorded the following finding: -

“9. Perusal of record shows that instant FIR was registered on the statement of complainant Lali. As per FIR, accused persons had assaulted the complainant party three times in three different episodes on same day i.e. 28.09.2021. The first incident had occurred at 3:30 p. m. outside the house of the complainant Lali, second incident had occurred at 9:00 p. m. in G. H., Charkhi Dadri and thereafter third incident had occurred near Shanti Hospital, Charkhi Dadri. Complainant Lali has specifically named proposed accused Subham and Sanjay in the FIR and she alleged that the proposed accused Subham and Sanjay were also with other accused in the first episode at 3.3.0 pm, and all the accused abused complainant and her daughter Payal and also assaulted them. She further alleged that in second episode at 9:00 p.m., proposed accused Subham along with other accused

CRR-2580 of 2022

came at General Hospital, Dadri and they assaulted the complainant with knife and that time, proposed accused Sanjay was standing outside with motorcycle. She further alleged that in third episode proposed accused Subham along with other accused also assaulted injured Akshay, Ankit and Harsh near Shanti Hospital when they were coming to General Hospital to know about the complainant. Statement of daughter of complainant namely Payal and other injured namely Akshay, Ankit and Harsh were also recorded under Section 161Cr. P. C. on the same day i.e. 29.09.2021. The daughter of complainant namely Payal has also levelled allegations against proposed accused Sanjay that he assaulted her with kick and fist blows in the first episode, which occurred outside the house of complainant Lali. The injured Akshay also levelled allegations against proposed accused Subham that he gave blow of knife on his back towards right side and proposed accused Sanjay also thrown a Danda towards him, which struck on his right knee. Injured Ankit and Harsh though not specifically named proposed accused Sanjay and Subham but they stated that along with accused Sandeep, Shivam alias Shivri, Bira there were 10/12 known persons, who assaulted them near Shanti Hospital when they were going to General Hospital, Dadri to know about the complainant. The version of injured Akshay that proposed accused Subham gave blow of knife on his back towards right side is found support from his MLR as he was having incised wound of size .2 x 1 x 1 cm over right side of upper back.. In the said incident, five persons namely complainant Lali, her daughter Payal, Akshay, Ankit and Harsh received injuries as per their MLR's. All injured were having several incised wounds on their person except injured Payal. Injuries to complainant Lali is opined as dangerous to life

CRR-2580 of 2022

by the doctor. Hence, complainant and injured specifically named both the proposed accused in their statements before the police and they have also been named in the FIR. The oral version of the witnesses is supported by the medical record, therefore, strong evidence is available against the proposed accused Sanjay and Subham.

10. The police has exonerated the aforesaid proposed accused without assigning any reason as nothing is mentioned in final report under Section 173 Cr. P. C except that they were found innocent. The complainant Lali when stepped into witness-box as PW1 has reiterated the aforesaid allegations against proposed accused Subham and Sanjay. Hence, the material available on record against proposed accused is very strong and fulfills the criteria of law laid down in Hardeep Singh's case (supra). Therefore, I am of the considered view that grounds are made out to summon proposed accused namely Subham son of Shiv Kumar and Sanjay son of Shyam Lala, both residents of Valmiki Basti, Charkhi Dadri under the provisions of Section 319 Cr. P. C. to face trial in this case as additional accused, along with the accused persons, who are already facing trial for the commission of offences punishable under Sections 323, 324, 506 and 307 of IPC read with Section 34 IPC and Section 25 of Arms Act. Accordingly, the application under consideration stand allowed. Let they be summoned for 15.10.2022. Papers be tagged with main case file."

Section 319 Cr.P.C. reads as under :-

"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

CRR-2580 of 2022

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 sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced a fresh, 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.”

A perusal of Section 319 Cr.P.C. reveals that where in the course of any inquiry 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. The language of Section 319 Cr.P.C. is very clear that any person not being the accused, if has committed any offence, can be tried with the accused.

The Hon'ble Supreme Court in the landmark judgment, in the case of ***Hardeep Singh (supra)***, has framed one of the following issues :-

“5(iii) Whether the word 'evidence' used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and

CRR-2580 of 2022

includes the evidence collected during investigation or the word 'evidence' is limited to the evidence recorded during trial?"

and the same was answered in para 71 of the judgment which reads as under :-

"71. It is, therefore, clear that the word "evidence" in Section 319 Cr.P.C. means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the Court to decide whether power under Section 319 Cr.P.C. is to be exercised and not on the basis of material collected during investigation."

The Hon'ble Supreme Court also held in the said judgment as under :-

"98. Power under Section 319 Cr.P.C. is a discretionary and an extra- ordinary 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.

99. 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

CRR-2580 of 2022

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."

The test as laid down by the Hon'ble Constitution Bench for invoking power under Section 319 Cr.P.C. inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence, the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by the Supreme Court, is one which is more than prima facie case which is applied at the level of relevant proceedings.

In the present case, there is overwhelming evidence for summoning the petitioner and Shubham as additional accused as firstly, specific allegations against them were levelled by the complainant-Lali, Payal daughter-in-law of the complainant and injured-Akshay. The said oral statements were supported by the medical record, however, the police without assigning any reason declared them as innocent and the trial Court after examining the statements of the complainant-PW1-Lali, has rightly summoned the present petitioner and Shubham as

CRR-2580 of 2022

additional accused. The said statement of complainant-Lali reads as under: -

“Stated that on 28.09.2021, at about 3.30 PM. I along with my daughter namely Payal was standing outside my house, at that time Sandeep son of Sumer Singh, Shivam alias Shirdi son of Sanjay Shubham son of Shiv Kumar, Sanjay son of Shyam Lal, they started abusing me. Accused Sandeep, Shivam, Shubham started assaulting me and my daughter. Accused Sanjay gave a punch blow on my eyes, accused Sandeep gave a iron blow to my daughter. Thereafter, we got admitted my daughter in General Hospital, Charkhi Dadri. Many persons were gathered there in Government Hospital Charkhi Dadri. On the same day, at about 9:30 PM, Sandeep, Shivam, Shirdi, Sanjay and Veera were attack on us. Accused Sandeep gave a blow of knife on my abdomen. Accused Shivam and Veera gave a blow of knife on my left hand. Accused Sangy and Shivam gave a slap blow and then I fell down. Thereafter, I give information through telephone to my family members when my family members namely Ankit, Harsh, Akshay came in Government Hospital on motorcycle. Whereupon the above-said accused persons attacked with knife and danda to them. Thereafter, Ankit, Harsh and Akshay were got admitted in Government Hospital, Charkhi Dadri. After giving injuries accused persons gave threatening to kill us. During the treatment, I was referred to PGIMS Rohtak. My statement Ex. PW1/A was recorded by the police in Government Hospital, Charkhi. Today, accused Sandeep and Veera are present in the Court and accused Shivam, Shirdi and Sanjay are not present in the Court. I identify the accused Sandeep and Veera, who are present in the Court.

CRR-2580 of 2022

At this stage, an application under Section 319 Cr. PC has been moved by learned counsel for the complainant.”

I am of the considered view that the trial Court has rightly exercised its power under Section 319 Cr.P.C. on the basis of deposition of PW1-Lalli, which would suffice in law to invoke the power under Section 319 Cr.P.C.

No other point has been argued.

In view of the facts narrated above and settled proposition of law, no illegality or perversity is found in the order passed by the trial Court. Therefore, the present petition lacks merit and is accordingly dismissed with no order as to costs.

24.01.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No