

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(i)

CRR-3240-2019 (O&M)

Sombir

..... Petitioner

Versus

State of Haryana and another

..... Respondents

(ii)

CRR-395-2020 (O&M)

Sachin and another

..... Petitioners

Versus

State of Haryana and another

..... Respondents

Date of Decision : 12.04.2023

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Jagbir Singh, Advocate
for the petitioner in CRR-3240-2019.

Mr. Vijay Kumar Sheoran, Advocate
for the petitioners in CRR-395-2020.

Mr. Surender Singh, AAG, Haryana
for the respondent-State.

VIKRAM AGGARWAL, J (ORAL)

1. This judgment shall dispose of two criminal revision petitions, challenging the order dated 03.06.2019, passed by the Addl. Sessions Judge, Charkhi Dadri vide which the application moved under Section 319 of the Code of Criminal Procedure (for short 'Cr.P.C.') was allowed and the petitioners were summoned as additional accused to face trial.

2. The facts, in brief, are that on the basis of the statement of Tejbir son of Ram Chander, FIR No.237 dated 23.10.2017 was registered under Sections 307, 323, 325, 506, 34 IPC, at Police Station Badhra, District Charkhi Dadri.

3. The allegation was that on 20.10.2017, at about 7:30 p.m., complainant-respondent Tejbir (hereinafter referred to as 'the complainant') was assaulted by eight persons which included the present petitioners. It was alleged that the petitioner Sombir, who was armed with an iron rod gave a blow on the head of the complainant, Anil and Pardeep, who were having 'farsas' in their hands also hit the complainant on his head and the remaining accused, who were armed with sticks also gave beatings to the complainant. The injury on the head of the complainant was declared to be dangerous to life. The matter was investigated and after investigation, final report was submitted only against three persons and five persons including the present petitioners namely Sombir, Sachin and Abhishek alias Abhi were found to be innocent and their names were kept in column No.2. Charges were framed and in the prosecution evidence, statement of complainant Tejbir was recorded. He again reiterated the version after which the application under Section 319 Cr.P.C. was moved seeking to summon the five persons found to be innocent by the police, as additional accused. Vide the order under challenge, the said application was allowed and the five persons including the petitioners were ordered to be summoned.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioners have strenuously urged that the impugned order passed by the trial Court is not sustainable since no new

evidence had come before the trial Court and only the complainant had reiterated his previous version. It has been contended that during the investigation, a disclosure statement had been suffered by one of the accused Pardeep that it was he who had given the blow on the head of the complainant with an iron rod and even the iron rod was recovered from him. It has also been submitted that this in itself negates the case of the prosecution that it was Sombir who had given the blow on the head of the complainant with an iron rod. Learned counsel have contended that there was only one injury on the person of the complainant meaning thereby that all other persons had been falsely implicated. Learned counsel have argued that it is now well settled that the powers under Section 319 Cr.P.C. have to be exercised with caution and only where the circumstances so required and that this power should not be exercised in a casual manner. Learned counsel have further argued that the trial Court exercised this power in an extremely casual manner and summoned the petitioners under Section 319 Cr.P.C. despite any cogent evidence having come on record. In support of their contentions, learned counsel for the petitioners have relied upon the judgments of Hon'ble Supreme Court in *Mani Pushpak Joshi vs. State of Uttarakhand & Anr. 2019 (4) Law Herald (SC) 2961, Inderdev Prasad Singh & Ors. vs. State (GNCT of Delhi) & Anr. 2019 (4) Law Herald (SC) 3072 and Ramesh Chandra Srivastava vs. State of U.P. & Anr. 2021 (4) R.C.R. (Criminal) 219.*

6. On the other hand, learned counsel representing the respondent-State of Haryana has submitted that the impugned order, passed by the trial Court is well reasoned and is based upon the principles laid down by the

Hon'ble Apex Court with regard to exercise of powers under Section 319 Cr.P.C. from time to time. It has been argued that the complainant who had suffered an injury dangerous to life in the incident reiterated his version while appearing as a witness before the trial Court which was sufficient to summon the petitioners as additional accused. In support of his contentions, learned State counsel has relied upon the judgment of Hon'ble Apex Court in **Sartaj Singh vs. State of Haryana and Anr. Etc. 2021 (2) R.C.R. (Criminal) 527** as well as the judgment of a Coordinate Bench of this Court in **CRR-952-2022**, titled as **Randhir Singh vs. State of Haryana and others**, decided on **27.02.2023**.

7. I have considered the submissions made by learned counsel for the parties and have perused the case file.

8. Before advertng to the merits of the case, it would be essential to examine the law on the subject. In the case of **Hardeep Singh Vs. State of Punjab and others 2014 (3) SCC 92**, a Constitution Bench of the Hon'ble Supreme Court of India examined various questions with regard to Section 319 Cr.P.C. In the said case, a reference had been made to the Hon'ble Constitution Bench on account of different views having been expressed by the Hon'ble Apex Court and several High Courts on the scope and extent of the powers of the Courts under the criminal justice system to arraign any person as an accused during the course of inquiry or trial as contemplated under Section 319 Cr.P.C. After examining the matter threadbare, the Hon'ble Apex Court answered all the questions framed for consideration. Para 99 of the judgment answers question No. (iv), which was regarding the degree of satisfaction required for invoking the power under Section 319

Cr.P.C. The Hon'ble Supreme Court of India held as under:-

“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 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.”

9. The position of law which emerges, therefore, is that for summoning anyone as an additional accused, much stronger evidence is required than mere probability of his complicity. It also emerges that 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.

10. The order under challenge shall have to be tested on the touch stone of the principles laid down by the Hon'ble Apex Court in **Hardeep Singh's case** (supra). The complainant had named eight persons in his statement including the present petitioners. He had stated that the blow on

his head with an iron rod was given by petitioner Sombir. In the final report, the petitioners were excluded by saying that their involvement in the incident was not there and that Sombir was not present at the spot. No other details were given. After the framing of charges, the complainant appeared as a witness and reiterated his version and named all eight persons again. This time also he stated that the injuries on his head had been given by Sombir. The fact of accused Pardeep having suffered a disclosure statement that it was he who had given the blow on the head of complainant with an iron rod is not relevant for the time being because these things will be decided at the stage of trial.

11. Whether the disclosure statement would be admissible in evidence or not shall also be decided at the stage of trial. It has to be borne in mind that it has repeatedly been held that the statement of an injured witness has to be accorded as a special status.

12. The question regarding the weight to be attached to the evidence of an injured witness was examined by the Hon'ble Apex Court in the case of **Mukesh and another vs. State of NCT of Delhi and others 2017 AIR (SC) 2161**. After examining the law on the subject, the Hon'ble Apex Court held that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to implicate a third party for the commission of the offence. It was held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and

discrepancies therein. While arriving at this conclusion, the Hon'ble Supreme Court observed as under:-

"31. We may merely refer to **Abdul Sayeed v. State of M.P.(2010)10 SCC 259** where this Court held as under: (SCC pp.271-72, paras 28-30)

"28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. 'Convincing evidence is required to discredit an injured witness.' [Vide **Ramlagan Singh v. State of Bihar(1973) 3 SCC 881** , **Malkhan Singh v. State of U.P.(1975) 3 SCC 311** , **Machhi Singh v. State of Punjab b (1983) 3 SCC 470** , **Appabhai v. State of Gujarat 1988 Supp SCC 241** , **Bonkya v. State of Maharashtra (1995) 6 SCC 447** , **Bhag Singh v. State of Punjab (1997) 7 SCC 712** , **Mohar v. State of U.P.(2002) 7 SCC 606 (SCC p. 606b-c)** , **Dinesh Kumar v. State of Rajasthan(2008) 8 SCC 270** , **Vishnu v. State of Rajasthan(2009) 10 SCC 477**, **Annareddy Sambasiva Reddy v. State of A.P.(2009) 12 SCC 546** and **Balraje v. State of Maharashtra (2010) 6 SCC 673** .]

29. While deciding this issue, a similar view was taken in **Jarnail Singh v. State of Punjab(2009) 9 SCC 719** where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of

the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa v. State of Karnataka 1994 Supp (3) SCC 235* this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P. v. Kishan Chand(2004) 7 SCC 629* a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana (2006) 12 SCC 459*). Thus, *we are of the considered opinion* that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.'

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

13. Once the complainant stated in so many words that eight persons

had attacked him and the police report did not give the details as to how five accused were found to be innocent coupled with the fact that the statement of injured-complainant should not be discarded lightly, the trial Court did not commit any error in allowing the application under Section 319 Cr.P.C. In the considered opinion of this Court, this statement of the complainant was reason enough for allowing the application under Section 319 Cr.P.C. In any case, the petitioners shall get every opportunity to cross-examine the complainant and impeach his credit. Still further, other evidence shall also be led by the prosecution to prove the case against the accused beyond reasonable doubt and it is not only the examination-in-chief of the complainant which is going to be enough for the prosecution. The interest of justice demands that a proper trial should be conducted and all those involved in the incident should be brought to book.

14. In the case of **Sartaj Singh's case** (supra), relied upon by the learned counsel representing the State of Haryana, the Hon'ble Apex Court, while discussing all judgments on the subject held as under:-

“Applying the law laid down by this Court in the aforesaid decisions to the case of the accused on hand, we are of the opinion that learned Trial Court was justified in summoning the private respondents herein to face the trial as accused on the basis of the deposition of the appellant - injured eye witness. As held by this Court in the aforesaid decisions, the accused can be summoned on the basis of even examination-in-chief of the witness and the Court need not wait till his cross-examination. If on the basis of the examination-in-chief of the witness the Court is satisfied that there is a prima facie case against the proposed accused, the Court may in exercise of powers under section 319 CrPC, 1973 array such a person as accused and summon him to

face the trial. At this stage, it is required to be noted that right from the beginning the appellant herein - injured eye witness, who was the first informant, disclosed the names of private respondents herein and specifically named them in the FIR. But on the basis of some enquiry by the DSP they were not charge-sheeted. What will be the evidentiary value of the enquiry report submitted by the DSP is another question. It is not that the investigating officer did not find the case against the private respondents herein and therefore they were not chargesheeted. In any case, in the examination-in-chief of the appellant-injured eye witness, the names of the private respondents herein are disclosed. It might be that whatever is stated in the examination-in-chief is the same which was stated in the FIR. The same is bound to be there and ultimately the appellant herein - injured eye witness is the first informant and he is bound to again state what was stated in the FIR, otherwise he would be accused of contradictions in the FIR and the statement before the Court. Therefore, as such, the learned Trial Court was justified in directing to issue summons against the private respondents herein to face the trial.

15. In the considered opinion of this Court, this judgment is squarely applicable to the facts of the present case. In so far as the judgments relied upon by learned counsel for the petitioners are concerned, they would not help the petitioners as in the present case it has been found that there are strong and cogent reasons and evidence against the present petitioners and the other two persons who were summoned as additional accused. Infact, the examination-in-chief of the injured-complainant has been found by this Court to be a strong and cogent evidence for the purposes of summoning additional accused under Section 319 Cr.P.C.

In view of the aforementioned facts and circumstance, this Court does not find any merit in both the present petitions and the same are hereby dismissed. However, nothing observed hereinabove shall be construed to be an opinion on the merits of the case.

(VIKRAM AGGARWAL)
JUDGE

12.04.2023
mamta

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No