

2024:PHHC:172461

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-283-2019 (O&M)

Date of decision: 11.12.2024

NARVEER

....PETITIONER

Versus

RAJPAL AND ORS.

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rahul Vats, Advocate
for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

Mr. Deepender Singh, Advocate for the private respondents.

SANDEEP MOUDGIL, J.

1. This revision petition has been preferred against the order dated 02.01.2019, Annexure P-1, whereby the application moved by the injured under Section 319 Cr.P.C. for summoning 1.Rajpal son of Srichand; 2.Ombir son of Desh Raj; 3.Mukesh son of Satte @ Satya Parkash, all residents of village Prithla, Tehsil and District Palwal, to face trial as additional accused, has been dismissed by the learned Additional Sessions Judge, Palwal (for short – 'trial Court').

2. **Relief sought:**

Petitioner has prayed for setting aside the order dated 02.01.2019, Annexure P-1, holding the same to be illegal, unjust and

erroneous and application may kindly be allowed.

3. Contentions:

On behalf the petitioner:

It is contended by the learned counsel for the petitioner that the petitioner is an injured in FIR No.345 dated 03.05.2017, under Sections 148, 149, 323, 324, 506 IPC (offence under Section 307 IPC read with Section 25 of the Arms Act added later on) which was registered on the basis of complaint made by Manjeet Singh son of Partap Singh r/o Pirthala at Police Station Sadar Palwal, District Palwal on the allegations that on 01.05.2017 complainant was going towards his house and when he had reached in front of the house of Jaipal and saw that his cousin brother Narveer son of Bachhu Singh resident of Prithala was being beaten up brutally by Karamveer son of Deshraj, Chaman Lal, Manjeet son of Dulli and Ombir son of Desraj, besides two other boys. Manjeet was having knife, Karamveer was having Danda, latter caused blows on the head of Narveer, other assaulted him by lathi, dandas and sariya. On alarm being raised by complainant, Bir Singh and Bachhu Singh came immediately on the spot, assailants alongwith their respective weapons fled away from the spot. Though, respondents No.1 to 3 are specifically named in the FIR by the complainant as accused for inflicting injuries on the person of Narveer (the present petitioner), yet the police after investigation of the matter, filed final report under Section 173 Cr.P.C. only against Manjeet, Chaman and Karamveer and exonerated Rajpal and Ombir and declared Mukesh as innocent. Thereafter, application under Section 319 Cr.P.C. was filed to summon respondents No.1 to 3 as additional accused to face trial in the case. However, the same has been dismissed by the learned trial Court vide order dated 02.01.2019 rather than allowing the

application, in view of the allegations in FIR and deposition of PW-8 before the learned trial Court.

On behalf of Respondent – State :

Learned State counsel has submitted that there is no fault in the investigation conducted by the investigating agency because as per challan, Annexure P-9, during investigation, respondents No.1 to 3 were not found involved in the present case and they were got discharged through the Court, as per rules. Accordingly, challan was presented against Manjit s/o Duli Chand and Chaman s/o Rajpal in the case and they are facing trial. Hence, the present petition is liable to be dismissed.

4. Heard both the sides and case file perused.

5. **Analysis:**

The Constitution Bench of the Supreme Court in ***“Hardeep Singh vs. State of Punjab and others”, (2014) 3 SCC 92***, while illuminating the scope of Section 319 Cr.PC, laid down that:-

“57. Thus, the application of the provisions of Section 319 CrPC, at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 CrPC can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to herein above, adding a person as an accused, whose name has been mentioned in Column 2 of the charge-sheet or any other person who might be an accomplice.”

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“105. Power under Section 319 CrPC is a discretionary and an extraordinary 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.

106. 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 unrebutted, 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” 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 CrPC to form any opinion as to the guilt of the accused.”

In Hardeep Singh (supra), the Supreme Court eloquently held that the word “evidence” in Section 319 CrPC has to be broadly understood and thus materials which have come before the Court, in course of enquiry, can be used for (i) corroboration of evidence recorded by Court after commencement of trial; (ii) for exercise of power under Section 319 Cr.P.C.; and (iii) also to add an accused whose name is shown in column no.2 of the chargesheet.

In “*Sukhpal Singh Khaira vs. State of Punjab*”, (2023) 1 SCC 289, the Supreme Court succinctly explained the powers bestowed on the Court under Section 319 CrPC and ruled that:-

“15. At the outset, having noted the provision, it is amply clear that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.”

The Constitution Bench refreshed the guidelines which, the competent court, must follow while exercising powers under Section 319 CrPC and further ruled that:-

(i) if the competent court finds evidence or if application under Section 319 Cr.P.C. is filed, regarding involvement of any other person in committing the offence based on evidence “recorded at any stage in the trial” before passing of the order on acquittal or sentence, it shall pause the trial at that stage and the Court shall proceed to decide the fate of the application under Section 319 Cr.P.C.;

(ii) if the Court decides to summon an accused under Section 319 Cr.P.C., such summoning order shall be passed before proceeding further with the trial in the main case and depending upon the stage at which the order is passed, the Trial Court shall apply its mind to the fact as to whether such summoned accused is to be

tried along with other accused or separately; and (iii) if the power under Section 319 Cr.P.C. is not invoked or exercised in the main trial till its conclusion and if there is a split-up case, such power can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split-up (bifurcated trial).

After analyzing the dicta of the Constitution Benches in Hardeep Singh (supra) and Sukhpal Singh Khaira (supra), the Supreme Court in ***Juhru v. Karim, 2023 SCC OnLine SC 171***, unequivocally held that:-

“17. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima facie case is sine qua non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material is, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked.”

It is for the trial court to evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weight and value, as has been testified against

those already facing trial and in the absence of any credible evidence, the power under Section 319 CrPC ought not be invoked.

The Constitution Benches in Hardeep Singh (supra) and Sukhpal Singh Khaira (supra) have cautioned that power under Section 319 CrPC is a discretionary and extraordinary power which should be exercised sparingly and only, in those cases, where the circumstances of the case so warrant and the crucial test as noticed above 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. It is imperative to add here that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., and in conformity with the binding judicial dictums referred to above. The procedural safeguard can be that ordinarily the summoning of a person, at the very threshold of the trial, may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weight and value, as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked.

Thus, this Court held 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.

Now, coming to the facts of the present case, although witnesses and the injured, Narbir, have named all individuals involved in causing injuries, no specific injuries have been attributed to the persons who are sought to be summoned. Their alleged roles contradict the statements of both witnesses and the injured.

Given the quality of evidence presented by the prosecution regarding the accused sought to be summoned, it is uncertain whether it would secure a conviction. Therefore, it would be inappropriate to subject these individuals to trial under Section 319 of the CrPC.

6. Conclusion:

In view of the discussions made hereinabove, this Court is of the opinion that there is no illegality or perversity in the impugned order dated 02.01.2019 (Annexure P-1), whereby the application under Section 319 Cr.P.C. filed by the petitioner to summon Rajpal, Ombir and Mukesh stands dismissed, by learned Additional Sessions Judge, Palwal. Hence, the impugned order dated 02.01.2019 is upheld and the present petition stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

11.12.2024

Poonam Negi

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No