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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR-413-2020****Date of Reserve:18.07.2024****Date of Decision:22.11.2024**

Harbans Singh

...Petitioner

Vs.

State of Punjab and Anr.

...Respondents

Coram : Hon'ble Mr. Justice N.S.ShekhawatPresent: Ms. Sushma Chopra, Advocate
for the petitioner.

Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

N.S.Shekhawat J.

1. The petitioner has filed the present revision petition against the impugned order dated 17.01.2020, passed by the Court of Judicial Magistrate Ist Class, Ludhiana, whereby the petitioner was summoned under the provisions of Section 319 Cr.P.C to face trial along with the other accused.
2. The FIR in the present case was registered on the basis of the statement made by Paramjit Singh son of Natha Singh and the same has been reproduced below:-

“At this time one complaint No. CR No.-13677DR No.7412, dated 30.10.12 has been received from Commissioner Officer, Police, Ludhiana to the DSP. Sir, Ludhiana (Area Division No.3, Ludhiana). Subject: Related to the shop No.55, Guru Nanak Market, Hazuri Road, Ludhiana. Respected Sir, it is requested that our property V/5/428 situated at Hazuri Road, Ludhiana owned by Rajinder Singh, Surinder Singh, Jagdev Singh and Paramjit Singh, all are sons of Natha Singh. In this property, there is one shop No.55, which was lying vacant for the last 7-8 years and its electricity meter was also



disconnected by the electricity board. The shop was lying vacant since the Indian Acrelic Ltd. left the shop. The possession of this shop was with the four brothers, but I have quarrelled with three brothers from the last sometime. Rajinder Singh, Surinder Singh and Jagdev Singh, all sons of Natha Singh have rented out this shop to one Chhole Bhatore Wala Dilawar Singh son of Phuman Singh without my consent and they have also taken Rs.8 lacs Salami Pagri at the market price. The shop was rented out without my consent and I have come to know about this when Dilawar Singh unlocked the shop and took the possession when I asked him why he is opening the shop then he threatened me by saying that Rajinder Singh, Surinder Singh and Jagdev Singh are with me, you can do whatever you want to do. When I asked Rajinder Singh, Surinder Singh and Jagdev Singh why they gave this shop on rent without his consent, then they accompany with Harbans Singh son of Rajinder Singh, Harjinder Singh son of Surinder Singh and Dilawar Singh son of Phuman Singh abused me and pushed me out by saying that you do what you can do, we have rented it out and if you will fight with us then you will be in difficulty and you will have to pay the cost for this. Respected Sir, I apprehended that they can kill me. Kindly take necessary steps on my complaint and the possession of the shop will be given to me. I shall be highly thankful to you. Sd/ Paramjit Singh son of Natha Singh, resident of B-5/471, Hazuri Road, Ludhiana, Mobile No.9569532004.

3. Learned counsel for the petitioner contends that in the present case, the police had conducted the investigation in detail and he was found innocent. During the course of evidence, the respondent himself appeared as a witness, who did not state a single word against the petitioner. Still further, two more eye witnesses Sita Ram (PW-5) and Tilak Raj (PW-6) were examined, but they also turned hostile and did not state a word against the petitioner. Still further, the petitioner was wrongly summoned by the Trial Court.



4. Learned counsel for the petitioner further contends that the complainant and accused are closely related to each other and are part of the same family. In fact, four brothers were running a company together, having its registered office at Ludhiana. In the year 2014, some differences had arisen between the parties and the company petitions were filed by the respondent No.2, his wife and his son. However, the parties had entered into a compromise and the company petitions were withdrawn by respondent No.2. Learned counsel further contends that the application under Section 319 Cr.P.C has been wrongly allowed by the Trial Court.

5. On the other hand, learned State counsel has vehemently argued that the impugned order is legally sustainable and has been passed by taking into account the evidence led by the parties. Even there was sufficient evidence to summon the petitioner as an additional accused and the present petition deserves to be dismissed by this Court.

6. I have heard the rival contentions made by learned counsel for the parties and perused the record carefully.

7. Before proceeding further, it would be appropriate to reproduce the provisions contained in Section 319 Cr.P.C, which read as under:-

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 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 subsection (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.”

8. Still further, while discussing the powers of the Court under Section 319 Cr.P.C to face trial along with the other co-accused, was discussed by the Hon’ble Supreme Court in the matter of “**Sukhpal Singh Khaira Vs. State of Punjab 2023(1)SCC 289** held as follows:-

31. In analysing the issue and making the above conclusion on all aspects, we are also persuaded by the view taken by this Court, among others, in the case of Rajendra Singh v. State of U.P. and Another (2007) 7 SCC 378 wherein it is concluded with regard to the object of section 319 of CrPC, 1973 as hereunder:-

"20. The power under Section 319 of the Code is conferred on the court to ensure that justice is done to the society by bringing to book all those guilty of an offence. One of the aims and purposes of the criminal justice system is to maintain social order. It is necessary in that context to ensure that no one who appears to be guilty escapes a proper trial in relation to that guilt. There is also a duty to render justice to the victim of the offence. It is in recognition of this that the Code has specifically conferred a power on the court to proceed against others not arrayed as accused in the circumstances set out by this section.



It is a salutary power enabling the discharge of a court's obligation to the society to bring to book all those guilty of a crime.

21. Exercise of power under Section 319 of the Code, in my view, is left to the court trying the offence based on the evidence that comes before it. The court must be satisfied of the condition precedent for the exercise of power under Section 319 of the Code. There is no reason to assume that a court trained in law would not exercise the power within the confines of the provision and decide whether it may proceed against such person or not. There is no rationale in fettering that power and the discretion, either by calling it extraordinary or by stating that it will be exercised only in exceptional circumstances. It is intended to be used when the occasion envisaged by the section arises."

"32. We have also kept in view the point by point analysis of the object and power to be exercised under [Section 319](#) of CrPC, as has been indicated in para 34 of [Manjit Singh vs. State of Haryana and Others](#) (2021) SCC Online SC 632."

33. For all the reasons stated above, we answer the questions referred as hereunder:-

"I. Whether the trial court has the power under section 319 of CrPC, 1973 for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

The power under section 319 of CrPC, 1973 is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by



imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

II. Whether the trial court has the power under section 319 of the CrPC, 1973 for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.

III. What are the guidelines that the competent court must follow while exercising power under section 319 CrPC, 1973?"

(i) If the competent court finds evidence or if application under section 319 of CrPC, 1973 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.

(ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

(iii) If the decision of the court is to exercise the power under section 319 of CrPC, 1973 and summon the accused, such summoning order shall be passed before proceeding further



with the trial in the main case.

(iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

(v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

(vi) If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.

(vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

(viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under section 319 of CrPC, 1973 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.

(ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under section 319 of CrPC, 1973 the appropriate course for the Court is to set it down for re-hearing.

(x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.



(xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

(xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier;

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.

9. In the present case also, the prosecution had examined respondent No.2 as a witness against the petitioner. However, the respondent No.2 himself had not uttered even a single word against the present petitioner. Further more, the alleged eye witnesses of the occurrence, Sita Ram (PW-5) and Tilak Raj (PW-6) had turned hostile in the present case and did not even named the petitioner as an accused in the present case. Still, the Court had wrongly summoned the present petitioner. Still further, the company was being run by some other person and the petitioner was wrongly summoned.

10. Still further, even while deciding the application in question, the Trial Court wrongly held that no plausible explanation had been given as to what was the reason for not joining the accused Harbans Singh, petitioner and the said findings is apparently wrong. While deciding an application under Section 319 Cr.P.C., the Court was to weigh the evidence to ascertain as to whether the petitioner was liable to be summoned under Section 319 of Cr.P.C or not. Even, the powers under Section 319 Cr.P.C., indicates that the power conferred on the Court to summon any person, who is not an accused in the case, appears from the evidence that such person has a role in committing the

crime. Even such power has to be exercised at the earliest available opportunity. In the present case, instead of discussing the prosecution evidence, the Trial Court proceeded on the assumption that the petitioner was wrongly kept in column No.2 by the police. Thus, approach of the Trial Court in disposal of the application was wrong and the impugned order is liable to be set aside by this Court.

11. In view of the above discussion, the present petition is allowed and the impugned order dated 17.01.2020, passed by the Court of Judicial Magistrate Ist Class, Ludhiana is ordered to be set aside and the application under Section 319 Cr.P.C., is ordered to be dismissed.

(N.S.SHEKHAWAT)
JUDGE

22.11.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No