

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(283)

1. CRM-M-1044-2018 (O&M)

Vikram Sharma and othersPetitioners

Vs.

The State of Haryana

2. CRM-M-45592-2023

Kuldeep VatsPetitioner

Vs.

State of Haryana

Date of decision: 16.01.2024

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Anil Kumar Lamdharia, Advocate
for the petitioners.

Mr. Rahul Dev Singh, Additional Advocate General, Haryana.

Ms. Supriya Garg, Advocate
for the complainant.

VIKAS BAHL, J. (ORAL)

1. This order shall dispose of two criminal petitions bearing CRM-M-1044-2018 filed by four petitioners, namely, Vikram Sharma son of Daulat Ram, Sushil son of Ram Avtar, Mahesh son of Daulat Ram and Krishan son of Bhagwan and CRM-M-45592-2023, filed by petitioner Kuldeep Vats son of Satuanaryan and both the said petitions have been filed under Section 482 Cr.P.C. praying for quashing the order dated 14.10.2016 (Annexure P-6) passed by the JMIC, Gurugram, whereby the petitioners,

have been summoned as additional accused to stand trial along with the others in case bearing FIR No.187 dated 24.10.2010 under Sections 147, 148, 323, 325, 452 and 506 IPC, registered at Police Station Bilaspur and also the order dated 15.12.2017 (Annexure P-8) passed by the Additional Sessions Judge, Gurugram, upholding the order dated 14.10.2016 while dismissing the revision petition filed by four petitioners in CRM-M-1044-2018.

2. With the consent of learned counsel for the parties, CRM-M-1044-2018, has been taken up as the lead case and facts are being noticed from the same.

FACTS OF THE CASE:-

3. Brief facts of the case are that FIR No.187 dated 24.10.2010 under Sections 147, 148, 323, 325, 452 and 506 IPC, was registered against 11 accused persons and after completion of investigation, a report under Section 173 Cr.P.C. was filed against five persons, whereas, six accused persons including five petitioners, who have filed two different set of petitions, were not challaned. The charges under Sections 323, 325, 452 and 506 all read with Section 149 IPC in addition to Sections 147 and 148 IPC were framed on 15.01.2023 against the said five accused persons. After the examination of PW-1 and PW-2, an application under Section 319 Cr.P.C. was filed by the complainant Sushila Saini, who, as per the case of the prosecution, was an eye witness and wife of the injured Suresh Kumar Saini and the said application was forwarded by the State and the Judicial Magistrate 1st Class, Gurugram, vide order dated 12.08.2014, declined to summon the additional accused including the petitioners. In the said order,

it was observed that although, PW-1 and PW-2 had stated that the petitioners therein had inflicted injuries on injured Suresh Kumar Saini, but medical evidence, although had been filed along with the report under Section 173 Cr.P.C. had not yet been proved as no expert witness had been examined till the passing of the said order. It was however observed that there were strong grounds for presuming the involvement of the said persons including the petitioners. The complainant filed a revision petition bearing No.CRR-2922-2014, challenging the said order and at the time of hearing of the case, learned counsel for the complainant had submitted that since the application under Section 319 Cr.P.C. had been dismissed by the trial Court on the ground that the medical evidence had not been produced, thus, the complainant prayed for withdrawal of the petition with liberty to file an application before the trial Court under Section 319 Cr.P.C. after leading medical evidence. The said prayer of the complainant, who had filed the said petition, was allowed and the complainant was permitted to withdraw the said petition and the liberty sought was granted. Subsequently, on 11.08.2015, PW-7 (Dr. Hazarilal, S.M.O. Bhorkalan, Gurgaon) was examined and he produced on record Ex.PW7/A, Ex.PW-7/B and Ex.PW-7/C and Ex.PX. On 05.10.2015, PW-9 (Dr. Pankaj, Consultant Radiologist Artemis Health Institute, Gurgaon) appeared in the witness box and apart from other documents, tendered, X-Ray report of patient Suresh Saini, which was exhibited as Ex.PW9/B. On 30.03.2016, PW-13 (Dr. Ritesh Kumar, Orthopedic Surgeon, Giridih, Jharkhand) had appeared in the witness box and proved his report as Ex.PW13/A, which pertained to X-Ray of the injured Suresh Kumar Saini detailing fractures suffered by him. After

the evidence of the said witnesses was recorded, a fresh application (Annexure P-5) under Section 319 Cr.P.C. was filed by the complainant for summoning the present petitioners. The JMIC, Gurugram, vide order dated 14.10.2016 after considering the evidence of PW-1 and PW-2, who had made specific allegations against the petitioners and also after considering the medical evidence, came to the conclusion that there were specific overt acts attributed to each of the petitioner and the ocular testimony of PW1 and PW2 was supported by medical evidence and thus, summoned the petitioners. Four petitioners who are petitioners in CRM-M-1044-2018, filed a revision petition before the Sessions Judge, Gurugram. It would be relevant to note that petitioner Kuldeep Vats had not filed any such revision petition and was thus satisfied with the order, vide which he was summoned under Section 319 Cr.P.C. The revision petition filed by the above-said four petitioners was dismissed by the Additional Sessions Judge, Gurugram, vide order dated 15.12.2017 (Annexure P-8). The Additional Sessions Judge, Gurugram, while dismissing the said petition observed that as per the medical evidence, injured Suresh Saini had suffered four fractures on his person and further observed that the allegations made by the prosecution have now been duly supported by medical evidence. The filing of the first application and order on the same as well as the order of the High Court granting liberty to the complainant/prosecution to file a fresh application after production of the medical evidence was also taken note of. Aggrieved against the said order, CRM-M-1044-2018 was filed in the year 2018. After a delay of more than five years from passing of the said order by the Sessions Court, the petitioner Kuldeep Vats had filed a petition bearing

CRM-M-45592-2023 and in the said petition, challenge has been made to both the orders dated 14.10.2016 and 15.12.2017 although, no revision was filed by the said petitioner against the order dated 14.10.2016 and the said petitioner was not a party in the revision petition, which was decided on 15.12.2017.

ARGUMENTS ON BEHALF OF THE PETITIONERS:-

4. Learned counsel for the petitioners had during the course of arguments handed over a chart of the injuries which have been attributed as per the FIR/challan to the 11 accused persons including the petitioners. The chart, so handed over by learned counsel for the petitioner has been taken on record and marked as Mark "A". On the basis of the said chart, it has been submitted by learned counsel for the petitioner that as far as the petitioner-Vikram Sharma (petitioner in CRM-M-1044-2018) and Kuldeep Vats (petitioner in CRM-M-45592-2023) are concerned, they have been attributed injuries on the right foot and not on the right leg as is sought to be stated in the short reply filed on behalf of the complainant. It is submitted that the said fact is apparent from a reading of the translation of the report under Section 173 Cr.P.C. (Vernacular copy of which is at page 90 of the paper book) where the words which have been mentioned are "right foot". It is submitted that as per the MLR, no injury has been suffered by the injured on the right foot. The second ground raised by learned counsel for the petitioner for challenging the impugned orders is that respondent No.2 had previously also filed an application under Section 319 Cr.P.C. and the said application was dismissed vide order dated 12.08.2014 (Annexure P-3).

Specific reference has been made to para 6 of page 44-A of the said order to

highlight the fact that it was observed by the Court in the said order that although, the witnesses PW1-Sushila and PW2-Suresh Saini had stated that the persons named in the present application had inflicted injuries on the complainant but the medical evidence filed by the police along with challan had not yet been proved as no expert witness had been examined by the prosecution till date. It is further pointed out that it had been observed in the said order that the argument of the complainant to the effect that the police was in connivance with the person who were declared innocent was unacceptable as neither there was any evidence regarding the same nor there was any evidence of police officials acting in a mala fide manner. It is submitted that in view of the said order, the subsequent application filed under Section 319 Cr.P.C. was not maintainable and the impugned orders passed on the said subsequent application deserve to be set aside on the said ground alone. The third argument raised by learned counsel for the petitioner is that a perusal of the challan (Annexure P-1 at page 27 of the paper book) more so, at page 34 of the paper book would show that after considering the entire matter, it was stated by the Investigating Agency that the present petitioners have been found to be innocent during the course of investigation and thus, summoning the present petitioners on the basis of evidence of PW1 and PW2, which was a reiteration of the allegations in the FIR and also on the basis of the medical evidence, is illegal and against law. It is further pointed out that as per the impugned orders, more so, order dated 14.10.2016 (Annexure P-6), no specific role has been attributed to the petitioners and thus, their summoning is against law and deserves to be set aside. Learned counsel for the petitioner has submitted that the translation

of the report under Section 173 Cr.P.C. which has been annexed as Annexure P-1 along with CRM-M-1044-2018 is not correct and, therefore, he has placed on record the corrected translated copy of the said report under Section 173 Cr.P.C. as Annexure A-1 by filing CRM-46590-2023 in CRM-M-45592-2023, which is the connected matter.

ARGUMENTS ON BEHALF OF THE COMPLAINANT AND STATE:-

5. Learned counsel for the complainant as well as learned State counsel have opposed the present petitions and prayed for their dismissal. It is argued that in the present case, there are specific allegations against all the petitioners in the FIR with respect to criminal trespass and specific injuries having been inflicted by them. It is further submitted that in the challan, no material/evidence had been given/attached as to why during the course of inquiry, the said five petitioners were found to be innocent. It is stated that PW-1 and PW-2 who are the eye witnesses and the injured respectively had also made specific allegations against the petitioners both with respect to house trespass as well as with respect to injuries having been inflicted upon the injured and that PW-7, PW-9 and PW-13 have specifically proved on record that the injured had suffered eight injuries, out of which, five were fractures. It is further argued that a petition filed by petitioner Kuldeep Vats, apart from being filed at a highly belated stage, is also not maintainable, inasmuch as, no revision petition against the order of summoning was filed by the said petitioner before the Sessions Court and thus, he has no *locus standi* to challenge the said order of the Sessions Court. Further submission has been made that merely because in the first

round, the petitioners were not summoned, would not call for setting aside the impugned orders, inasmuch as, the High Court in the revision petition filed by the complainant against the order passed in the first round had specifically granted liberty to the complainant to file a fresh application after the medical evidence was led. It is submitted that a bare reading of the provisions of Section 319 Cr.P.C. would show that an application can be moved at any stage once there is evidence before the Court to show the involvement of a person as an accused. It is further submitted that even if at one particular stage, the evidence is not sufficient for summoning the accused under Section 319 Cr.P.C., then also, if at a subsequent stage, the evidence is sufficient, the trial Court would be within its power to summon the accused persons. In support of the said arguments, reliance has been placed upon the judgment of the Hon'ble Supreme Court in case titled as **"Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and others"**, **reported as 1983(1) Supreme Court Cases 1**. It is further submitted that the charge under Section 149 IPC has also been framed at the time of framing of charges against the co-accused of the petitioners and thus, even if there is a minor discrepancy in the injury attributed to the two petitioners as has been sought to be pointed by the learned counsel for the petitioners, then also the same would not further the case of the petitioners. In support of the said argument, reliance has been placed upon a judgment of the Hon'ble Supreme Court in case titled as **"Sandeep Kumar Vs. State of Haryana and another"**, **reported as 2023 SCC Online (SC) 888**. It is further submitted that a perusal of the challan as well as evidence of PW-1 and PW-2 would show that specific allegations have been made against all the petitioners

with respect to having committed trespass into the premises of the complainant making them liable for the offence under Section 452 IPC. The petitioners have also been attributed specific injuries with specific weapons. It is also the case of the complainant that the petitioners along with the other accused had formed an unlawful assembly and that the trial Court had rightly framed the charge under Section 149 IPC also. It is argued that in such a situation, no fault can be found in the impugned orders and the same deserve to be upheld.

FINDINGS:-

6. This Court has heard learned counsel for the parties and has perused the paper book and is of the opinion that both the petitions are meritless and deserve to be dismissed for the reasons which have been detailed hereinafter.

7. It is not in dispute that FIR No.187 dated 24.10.2010 was registered against 11 persons including five petitioners in the two petitions before this Court. A copy of the FIR has not been placed on record but learned counsel for the petitioners has referred to report under Section 173 Cr.P.C. which also details the allegations levelled in the FIR and has submitted that the correctly translated copy of the said report under Section 173 Cr.P.C. has been placed on record as Annexure A-1 in CRM-M-45592-2023 by filing an application bearing No.CRM-46590-2023 in the said case. A perusal of the same would show that specific allegations have been levelled by the complainant-Sushila Saini, who was an eye-witness and is the wife of Suresh Kumar Saini-injured, against the present petitioners to the effect that all the petitioners along with the other accused persons armed

with weapons including lathi, danda, sariya (iron rod) in their hands, had trespassed into the house of the complainant. Thus, on the basis of the said allegations, the offence under Section 452 of IPC is prima facie made out. Moreover, specific injuries have been attributed to each of the petitioners by the complainant. Learned counsel for the petitioners, as has been noticed in para 4 of the present order, had during the course of arguments, handed over a chart with respect to the injuries attributed to the 11 accused persons, including the petitioners, as per the FIR/report under Section 173 Cr.P.C. and the same was taken on record as Mark “A”. The said Mark “A” is reproduced hereinbelow:-

“*Alleged injuries attributed to the eleven accused as per challan/FIR*

<i>Sr. No.</i>	<i>Name of the accused</i>	<i>Weapon used</i>	<i>Injury attributed</i>
1	<i>Sushil</i>	<i>Sariya (iron rod)</i>	<i>Left Hand</i>
2	<i>Vikram</i>	<i>Sariya (iron rod)</i>	<i>Right foot</i>
3	<i>Mahesh son of Daulat Ram</i>	<i>Danda</i>	<i>Neck</i>
4	<i>Parveen</i>	<i>Danda</i>	<i>Head</i>
5	<i>Krishan</i>	<i>Danda</i>	<i>Right hand</i>
6	<i>Yajwinder</i>	<i>Danda</i>	<i>Right hand</i>
7	<i>Rana (died)</i>	<i>Sariya</i>	<i>Right foot</i>
8	<i>Kuldeep Vats</i>	<i>Danda</i>	<i>Right foot</i>
9	<i>Mahesh s/o Mool Chand</i>	<i>Sariya (iron rod)</i>	<i>Wrist of left hand</i>
10	<i>Bhagirath</i>	<i>Lathi</i>	<i>Waist/hip</i>
11	<i>Satbir</i>	<i>Lathi</i>	<i>Both shoulders</i>

”

8. A perusal of the said chart submitted by learned counsel for the

petitioners would show that Sushil, Vikram, Mahesh son of Daulat Ram, Krishan as well as Kuldeep Vats who are the five petitioners in the present two petitions have been attributed specific injuries and were also stated to be armed with specific weapons. The allegations which have been levelled in the FIR/report under Section 173 Cr.P.C. would prima facie show that all the accused including the petitioners were having a common intention to commit house trespass and to give injuries to the husband of the complainant. Nothing has been produced on record to show that on the basis of what evidence/material, the Investigating Agency had come to the conclusion that the petitioners were innocent when there were specific allegations against them of being present at the place of occurrence and also with respect to them having inflicted injuries and of carrying weapons.

9. Sushila Saini (eye witness) had appeared in the witness-box as PW1 and relevant portion of her evidence is reproduced hereinbelow:-

“PW1 Sushila Saini w/o Suresh Kumar R/o Bhora Kalan, Gurgaon.

*Stated that on 23.10.10, around 8.30-9.00 pm, I and my husband were at home. I went to open the gate when the bell rang. My husband followed me. **When I opened the gate, 10-11 people immediately entered the house in consultation. They were holding sticks and rods in their hands. First of all, Titu and Sushil hit the rods in their hands on my husband's left hand. Vikram hit the rod in his hand on my husband's right foot. Mahesh s/o Daulat Ram Sharma hit the stick in his hand on my husband's neck. Leela alias Parveen hit the stick in her hand on my husband's head due to which my husband fell on the floor bleeding. The fallen one, Pindi alias Krishna, hit the stick in his hand on the straight hand of my***

husband. Ghogali alias Yajuvinder hit the stick in his hand near my husband's right hand. Pratap Raja, the liquor contractor, Patodi took the rod in his hand and hit my husband on his right leg. Kuldeep Vats, former district councilor Padaudi, took the stick in his hand and hit my husband on his right foot. ”

10. A perusal of the above evidence would show that specific allegations have been levelled by the said witness against each petitioner and there are also allegations to the effect that the petitioners along with the other accused had entered into the house of the complainant after consultation.

11. Similarly, PW2-Suresh, who is the injured, has also specifically named the petitioners and has fully supported the allegations levelled in the FIR and also the evidence of PW1-Sushila. Dr. Pankaj Saini appeared in the witness-box as PW9 and has specifically proved on record five fractures suffered by injured Suresh Saini. Relevant portion of his evidence/affidavit which has been annexed as Annexure R-2/4 with the reply filed by the complainant is reproduced hereinbelow:-

*“In the Court of Ms. Varsha, Civil Judge (Junior Division)-
JMJC, Gurgaon*

State V. Bhagirath

FIR No. 187/10

U/s 323

PS Bilaspur

Peshi 05.10 2015

Evidence by way of affidavit

Madam,

I Dr Pankaj Saini Artemis Health Institute, Gurgaon do

hereby solemnly affirm and declare as under

*That I had radiologically examined, Patient name: Dr.
Suresh Saini GN 0000111011 on 24/10/2010*

- XRAY CHEST RT LEG AP/LAT, LT. LEG AP/LAT, PELVIS

*- X RAY RT HAND AP/LAT, LT HAND, RT ANKLE AP/LAT,
BOTH ANKLE AP/LAT*

- X RAY LT ELBOW, RT ELBOW

*- **RIGHT LEG** – **COMMINUTED FRACTURED BOTH
BONES-RT***

***LEG COMPOUND FRACTURE WITH SOFT TISSUE
HAEMATOMA***

*- **LEFT LEG**- **HAIR LINE FRACTURE-LT FIBULA***

*- **RIGHT HAND**- **TRANSVERSE OBLIQUE DISPLACED
FRACTURE SHAFT OF ULNA***

*- **LEFT HAND**- **COMMINUTED FRACTURE LT.
OLECRANON PROCESS DISPLACEMENT AND
TRANSVERSE FRACTURE LT ULNA; TRANSVERSE
FRACTURE SHAFT OF MIDDLE PHALANX.***

*- **RIGHT ELBOW**- **TRANSVERSE OBLIQUE DISPLACED
FRACTURE RT, ULNA.***

DEPONENT

*Verification: I hereby verify that the contents of the affidavit
are true and correct to the best of my knowledge and derived
from official records. Nothing has been concealed therein.”*

12. A perusal of the above would show that the injured had suffered comminuted fracture and also compound fracture on the right leg and has further suffered comminuted fracture on the left hand. In addition to the above, Dr. Ritesh Kumar, Orthopedic Suregon, Giridih, Jharkhand has also been examined on 30.03.2016 as PW13 and he had produced on record report Ex.PW13/A. On 11.08.2015, PW7 Dr. Hazari Lal, Senior Medical

Officer, General Hospital, Gurugram had been examined and he had produced on record MLC which was exhibited as Ex.PW7-C. As per the said medical evidence, a total number of 8 injuries out of which there were five fractures, were suffered by the injured-Suresh.

13. The Judicial Magistrate, Ist Class, Gurugram, vide order dated 14.10.2016, after taking into consideration the evidence of PW1 and PW2 and all the abovesaid medical evidence, observed that ocular testimonies were supported by the medical evidence and that there were specific overt acts attributed to each of the petitioner and thus, summoned the petitioners. Revision petition filed by four petitioners i.e., the petitioners who have filed CRM-M-1044-2018 was dismissed vide order dated 15.12.2017 and while dismissing the said revision petition, it was observed by the Additional Sessions Judge that the injured had suffered several fractures and that the allegations levelled against the petitioners were now supported by the medical evidence and thus, the order passed by the trial Court was upheld. It would be relevant to note that a perusal of the order dated 15.01.2013 (Annexure P-2) would show that the charges have been framed against the accused against whom the challan had been presented under Section 323 read with Section 149 IPC, Section 325 read with Section 149 IPC, Section 452 read with Section 149 IPC, Section 506 read with Section 149 IPC in addition to Section 147 and 148 of IPC. It would also be relevant to note that the petitioner-Kuldeep Vats had not filed any revision petition against the summoning order passed by the JMJC and thus, was satisfied with the same. Although, the four petitioners in CRM-M-1044-2018 had filed a revision petition in the year 2018 but the petitioner-Kuldeep Vats has filed

CRM-M-45592-2023 after a period of more than 5 years and 6 months from the date of passing of the order dated 15.12.2017 in which he was not even party. On the basis of the above facts and circumstances, this Court is of the opinion that the orders passed by the trial Court as well as the Additional Sessions Judge are in accordance with law and deserve to be upheld.

14. The arguments raised by learned counsel for the petitioners would not further the case of the petitioners in any manner. With respect to the argument that the second application under Section 319 Cr.P.C. was not maintainable, it would be relevant to note that even in the order dated 12.08.2014 passed on the first application under Section 319 Cr.P.C., it was observed at page 44-A of the paper book that witnesses PW1 and PW2 had stated that the present petitioners had inflicted injuries on the injured but the medical evidence which had been filed along with the challan, had not yet been proved as no expert witnesses had been examined by the prosecution till that date and despite observing that strong grounds for presuming the involvement of the petitioners was made out, the Court did not summon the present petitioners. The complainant had filed CRR-2922-2014 in which following order was passed on 20.11.2014 by a Coordinate Bench of this Court:-

“K.C.PURI.J.(ORAL)

CRM No. 31058 of 2014

The application stands allowed. Annexure P-9 is taken on record subject to all just exceptions.

Main case

Learned counsel for the petitioner has submitted that

application under Section 319 Cr.P.C was dismissed by the trial Court on the ground that medical evidence has not been produced. The petitioner wanted to withdraw the present petition with liberty to file application before the trial Court under Section 319 Cr.P.C after leading medical evidence.

The petition stands dismissed as withdrawn with the aforesaid liberty.

20.11.2014

Sd/-(**K.C.PURI**)

JUDGE”

15. A perusal of the said order would show that counsel for the complainant (petitioner therein) had sought permission to withdraw the petition with liberty to file an application before the trial Court under Section 319 Cr.P.C. after leading medical evidence and the said liberty was granted. Subsequent application (Annexure P-5) under Section 319 Cr.P.C. was filed after three Doctors i.e., PW7, PW9 and PW13 had been examined. The said witnesses were examined on 11.08.2015, 05.10.2015 and 30.03.2016, respectively. As has been stated hereinabove, the ocular version given by the eye-witness and the injured was substantially supported by the medical evidence and thereafter, the impugned orders were passed summoning the petitioners. No law has been cited on behalf of the petitioners to show that in case at one stage, the accused-petitioners are not summoned in pursuance of an application under Section 319 Cr.P.C. then during the course of the entire trial, the said accused cannot be summoned irrespective of the fact that at a subsequent stage, there is sufficient evidence for summoning them.

16. On the other hand, learned counsel for the complainant has relied upon a judgment passed by the Hon’ble Supreme Court in ***Municipal***

Corporation of Delhi's (Supra), relevant portion of which is reproduced hereinbelow:-

“17. Although we uphold the order of the High Court we would like to state that there are ample provisions in the Code of Criminal Procedure, 1973 in which the Court can take cognizance against persons who have not been made accused and try them in the same manner along with the other accused. In the old Code, s. 351 contained a lacuna in the mode of taking cognizance if a new person was to be added as an accused. The Law Commission in its 41st Report (para 24.81) adverted to this aspect of the law and s. 319 of the present Code gave full effect to the recommendation of the Law Commission by removing the lacuna which was found to exist in s. 351 of the old Code. Section 319 as incorporated in the present Code may be extracted thus:-

"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 enquiry 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 afresh, 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."

18. This provision gives ample powers to any court to take cognizance and add any person not being an accused before it and try him alongwith the other accused. This provision was also the subject matter of a decision by this Court in [Joginder Singh and Anr. v. State of Punjab and Anr.](#)(1) where Tulzapurkar, J., speaking for the Court observed thus:- (SCC Para 6 p. 349: SCC (Cri) 299)

"A plain reading of section 319 (1), which occurs in chapter XXIV dealing with general provisions as to inquiries and trials, clearly shows that it applies to all the Courts including a Sessions Court and as such a Sessions Court will have the power to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with the other accused....."

19. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. Xxx xxx xxx xxx

We would, however, make it plain that the mere fact that the proceedings have been quashed against respondent Nos. 2 to 5 will not prevent the court from exercising its discretion if it is fully satisfied that a case for taking cognizance against

them has been made out on the additional evidence led before it.”

A perusal of the above judgment would show that it was observed by the Hon’ble Supreme Court that Section 319 of Cr.P.C., 1973, filled up the lacuna in the earlier Code of Criminal Procedure, with respect to the mode of taking cognizance if a new person was to be added as an accused. It was observed that the said provision gives ample powers to the court to take cognizance and add any person not being an accused before it and try him alongwith the other accused. The observations were also made to the effect that in case the prosecution at any stage can produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused or accused against whom proceedings have been quashed, have also committed the offence, the Court can take cognizance against them and try them along with the other accused. Thus, even in a situation, where the proceedings against some of the accused had been quashed, the Hon’ble Supreme Court had observed that the same would not prevent the court from exercising its discretion, if it is fully satisfied that a case for taking cognizance has been made out on the basis of the additional evidence led before it. The present case is on a higher footing than the case which was being dealt with by the Hon’ble Supreme Court inasmuch as in the case before the Hon’ble Supreme Court, the proceedings against some of the accused had been quashed and yet, it was observed that the same would not be an absolute bar for summoning the said accused at a subsequent stage.

17. The argument of learned counsel for the petitioners to the effect

that the petitioners were found to be innocent during the course of investigation and thus, summoning is bad in law, does not further the case of the petitioners inasmuch as, once there is sufficient evidence before the trial Court to come to the prima facie conclusion that the petitioners are involved in the case and the ocular version is supported by the medical evidence then merely because the petitioners have been found to be innocent during the course of investigation cannot be a ground for rejection of the application under Section 319 Cr.P.C.. Moreover, there is nothing on record to show as to on the basis of what evidence/material, the Investigating Agency had come to the conclusion that the petitioners were innocent. At any rate, the evidence before the Court which is of primary importance has been duly taken into consideration by both the Courts while allowing the application under Section 319 Cr.P.C. Both the orders are detailed and speaking and even specific evidence led on behalf of the prosecution has been duly considered.

18. The argument raised by learned counsel for the petitioners to the effect that as per the chart supplied which has been taken on record as Mark "A", the injuries which have been attributed to petitioner-Vikram and petitioner-Kuldeep Vats are as per the corrected translation on "right foot" and not on the "right leg" and there is no specific injury on the "right foot", (although, there are injuries on the right leg), would also not further the case of the petitioners. In this regard, it would be relevant to note that with respect to the injuries attributed to the other petitioners, no such argument has been raised. Further, perusal of the FIR/report under Section 173 Cr.P.C. as well as evidence of PW1 and PW2 would show that in addition to

the specific attribution to each of the petitioner including, Vikram and Kuldeep Vats, specific allegations have also been levelled to the effect that the said persons along with other accused had trespassed into the house of the complainant and had thus, as per the said allegations committed the offence under Section 452 of IPC. FIR has also been registered under Sections 147 and 148 of IPC. Section 147 of IPC provides punishment for rioting and Section 148 of IPC provides punishment for rioting armed with deadly weapon. As per the provisions of Section 146 of IPC, rioting is defined as use of force or violence by an unlawful assembly, or by any member thereof, in pursuance of a common object of such assembly, and for the same, every member of such assembly would be guilty of the offence of rioting. Unlawful assembly has been defined under Section 141 of IPC which provides that an assembly of five or more persons is designated as an "unlawful assembly", if the common object of the persons composing the said assembly is to do one of the several things which have been mentioned in the said provision. In the FIR/report, specific allegations have been levelled qua the common intention among the petitioners and the other accused. There are 11 accused in all and as per the allegations, the petitioners were members of the unlawful assembly. Moreover, in the chargesheet dated 15.01.2013, the persons against whom the challan had been filed have been specifically charged under Section 323 read with Section 149 IPC, Section 325 read with Section 149 IPC, Section 452 read with Section 149 IPC, Section 506 read with Section 149 IPC in addition to Section 147 and 148 of IPC and thus, the provisions of Section 149 also stands attracted. Section 149 IPC specifically provides that in case an

offence is committed by any member of an unlawful assembly in pursuance of a common object of that assembly, or such as the members of that assembly knew to be likely to be committed in pursuance of that object, every person who, at the time of the committing the offence, is a member of the same assembly, is guilty of the said offence. Thus, even if the minor discrepancy as pointed out by the learned counsel for the petitioners is taken on face value then also since as per the allegations and as per the evidence on record, the petitioners were prima facie members of the said unlawful assembly the said petitioners including the petitioner-Vikram and petitioner-Kuldeep Vats would be liable for all the illegal acts committed by the other accused.

19. Hon'ble the Supreme Court in the case of ***Sandeep Kumar*** (Supra) has held as under:-

“10. The High Court has reasoned as follows :-

“The petitioner was found innocent during investigation. It could not even be established on record whether the petitioner was attributed any injury and even as per the version of the complainant himself, the petitioner had allegedly fled away from the spot. Thus, the material on record, does not make it a fit case to summon the petitioner as an additional accused.

The matter can be looked from another angle. It is the case of the complainant that the petitioner armed with a gun had come to the place of occurrence along with other co-accused. However, it does not seem to the common prudence that a person coming with a premediated mind at the spot with a gun, would flee without even firing or attempt a shot. This clearly points towards a false implication of the petitioner.”

11. In our opinion, whereas the trial court was absolutely correct to have summoned the accused based on the evidence of PW-9, the High Court committed a grave error in allowing the revision of the accused. Under the facts and circumstances of the case and on the powers of the Court under Section 319 and based on the evidence of PW-9, it was absolutely necessary for the trial court to have summoned the three accused, including the revisionist.

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 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.”

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17. In our considered opinion, the prosecution had fully made out its case for summoning the three as accused under [Section 319](#), Cr.PC, so that they may also face trial.

18. Under these circumstances, the appeal is allowed and the order of the High Court dated 02.03.2022, is hereby set aside. It is further directed that the trial shall proceed now in accordance with law, as expeditiously as possible. ”

A perusal of the above said judgment would show that in the said case, although, the respondent (accused) was found to be innocent during investigation and was not attributed any injury and the application under Section 319 Cr.P.C. was dismissed by the High Court but the Hon'ble Supreme Court while allowing the appeal, observed that once, one of the charges was under Section 149 and there were allegations of the accused being a member of an unlawful assembly then, even if no overt act was imputed to a particular person, the presence of the accused as a part of the unlawful assembly would be sufficient for conviction. It was observed that at the stage of summoning the accused under Section 319 Cr.P.C., prima facie satisfaction of the Court was required and once the eye-witness had clearly stated about the presence of the accused then the application should not have been rejected by the High Court. It would be relevant to note that the facts of the present case are on a higher footing than the above case inasmuch as there are specific allegations of trespassing with common intention and also injuries having been caused to the injured by each of the petitioner. Moreover, it is not in dispute that the injured-Suresh had suffered 8 injuries and five fractures, including Comminuted fracture on both bones of right leg along with compound fracture with soft tissue Haematoma. It would be relevant to reiterate here that as far as Kuldeep Vats (petitioner in CRM-M-45592-2023) is concerned, he had not filed a revision petition against the order of summoning passed by the trial Court and even the present petition before the High Court has been filed after a delay of more than 5 ½ years from the passing of the order by the Sessions Court.

20. Keeping in view the abovesaid facts and circumstances, no infirmity has been found in the orders passed by the Courts below and thus, both the petitions are meritless and deserve to be dismissed and accordingly, the same are dismissed.
21. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

January 16, 2024
naresh.k/pawan

(VIKAS BAHL)
JUDGE

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