

246 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-453-2022
Date of decision: 20.02.2024

STATE OF HARYANAPETITIONER

VERSUS

RAJBIR AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Bhardwaj, AAG, Haryana
for the petitioner.

Mr. Sandeep Gahlawat, Advocate
for respondents.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been filed against the impugned order dated 01.10.2021 passed by learned Sessions Judge, Rohtak vide which the application filed by the prosecution under Section 319 Cr.P.C. has been dismissed in case CIS No.271 of 2021 filed under Sections 302, 307, 148, 323 and 506 of IPC and Section 27, 30 of Arms Act.

FACTUAL MATRIX

2. The facts, in brief, are that allegedly, on 26.11.2019, the complainant namely Karan Singh along with his sons Jagbir and Rohit was going to his fields to load paddy husk. Jagbir and Rohit were riding a scooter and Karan Singh was following them on a tractor. On the way, Rohit and Jagbir were stopped by 5 persons namely Dalbir, Jitender, Rajbir, Sanjay and Godhar. After being stopped, Dalbir fired gun shots in an indiscriminate manner upon Jagbir with a gun/revolver and Jagbir started bleeding profusely. Upon witnessing the same, the complainant started shouting and ran towards his injured son but the aforesaid accused persons fled from the scene. Then, complainant and Rohit took Jagbir, who was shot 5-6 times, to a hospital.

Thereupon, the complainant made a statement to the concerned police on the basis of which, FIR no.440 dated 26.11.2019 was registered under Sections 148, 149, 307, 323 and 506 of IPC and Sections 27, 30 of Arms Act with police station Kalanaur. On 03.12.2019, injured Jagbir died and an offence under Section 302 of the IPC was added. The investigation was carried out by the investigation agency and thereupon, accused Jitender and Dalbir were sent to face trial, whereas, present respondents Rajbir, Sanjay and Godhar were not.

3. Charges were framed against the accused Jitender and Dalbir on 17.09.2021 for commission of offence punishable under Section 302 read with Section 34 and Section 506 of IPC, whereas, accused Jitender was also charged for commission of offence under Section 27 of the Arms Act.

4. Prosecution, after examining the complainant Karan Singh as PW1, filed an application under Section 319 Cr.P.C to summon the present respondents as additional accused in the case (supra) stating that specific roles have been assigned to them in the commission of the said offence. The learned trial Court dismissed the said application on finding it devoid of any merit. Aggrieved by the same, the petitioner has approached this Court by way of the present petition.

CONTENTIONS

5. Learned state counsel appearing for the petitioner in the present case *inter alia* contends that a perusal of the material on record clearly shows that specific role has been attributed to the present respondents and they have been specifically named in the complaint filed by the complainant-eyewitness Karan Singh, his statement recorded under Section 161 Cr.P.C as well as in his examination-in-chief as PW1 as well as. The respondents along with other accused persons had stopped the deceased son of the complainant and fired upon him with common intention to kill which resulted in his death and therefore, are liable to be summoned as additional accused. He also submits that

the complainant was not specifically cross-examined on the point of their presence as well as their active involvement at the place and time of occurrence, respectively.

6. Learned state counsel further submits that the learned trial Court has completely ignored the settled law that polygraph conducted upon the accused, in itself, is not a substantive evidence but can only be used for corroborating the other evidence available

7. The learned counsel for the respondents submits that the impugned order (supra) has been passed in accordance with the law and does not warrant any interference by this Court as the respondents cannot be summoned as additional accused under Section 319 of the Code in the absence of material evidence against them. He further submits that the degree of satisfaction of the learned trial Court has to be of higher degree while summoning additional accused than the one required at the time of framing of charges and since, the polygraph test conducted on the respondents came back to be negative during the investigation, they have rightly been not summoned as additional accused by the learned trial Court.

OBSERVATION AND ANALYSIS

8. Before proceeding further, it is pertinent to discuss the perspicuous observations made by the Hon'ble Supreme Court in some of its recent judgments. Discussing the scope of Section 319 Cr.P.C., the Constitution Bench of Hon'ble Supreme Court in case titled **Hardeep Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623** has laid down that:

"105. Power under Section 319 Cr.P.C. 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 com-

mitting 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 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. Hon'ble Supreme Court in **Brijendra Singh and Others Vs. State of Rajasthan, (2017) 7 SCC 706**, while summing up the ratio as laid down in **Hardeep Singh's case (supra)** has held as under:

"Power under Section 319 Cr.P.C. can be exercised by the trial Court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial Court finds that there is some 'evidence' against such a person on the basis of which evidence it can

be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect - of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima-facie opinion which is to be formed requires stronger evidence than mere probability of his complicity."

10. Hon'ble Supreme Court later in 2019 relying on **Hardeep Singh (supra)** held in **Periyasami and Others Vs. S.Nallasamy (2019) SCC Online SC 379** that:

"The additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial

convicting the accused."

11. Again Hon'ble Supreme Court in the case of **Sagar Vs. State of Uttar Pradesh and another Criminal Appeal No. 397 of 2022 (Arising out of SLP(Crl) No.7373 of 2021)**, referring to **Hardeep Singh (supra)** laid down that:

"The Constitution Bench has given a caution that power under Section 319 of the Code 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 unrebutted, would lead to conviction."

12. Recently Hon'ble Supreme Court in case of **Juhru & Ors. Versus Karim & Anr. 2023 AIR (Supreme Court) 1160** observing the scope of section 319 Cr.P.C held that:

"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 quo 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.”

13. Having heard the learned counsel for the parties and after perusing the record, it is manifestly clear that the only one fire-arm (revolver) was used in the abovesaid alleged offence as per FSL report dated 24.01.2020, which belongs to Jitender and has already been recovered. Thus, the version of the complainant that the respondents were also armed and fired upon his deceased son is not supported by the evidence on record. Moreover, the role of the respondents was investigated by the concerned police and they were found innocent. Even a polygraph test of the respondents was conducted which came out to be negative. Therefore, this Court is of the opinion that order under challenge was passed after satisfying the observation made by the Constitution Bench in ‘**Hardeep Singh Vs. State of Punjab**’ (Supra) that there is a great difference in standing of a person who has been discharged in an investigation compared to a person who was never subjected to such investigation.

CONCLUSION

14. In view of the above discussion, this Court finds that the impugned order dated 01.10.2021 is passed in conformity with the binding judicial dictums and no ground is made out for setting aside the same.

15. Thus, the present petition is dismissed being devoid of any merit.

February 20, 2024
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(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No