

CRM-M-11554-2022 (O&M) and other connected petitions

2024.PHHC.091997



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

1.

CRM-M-11554-2022 (O&M)
DECIDED ON:12.02.2024
- AVTAR SINGH

....PETITIONER
- VERSUS
- STATE OF PUNJAB AND OTHERS

.....RESPONDENTS
2.

CRM-M-11603-2022 (O&M)
- AVTAR SINGH

.....PETITIONER
- VERSUS
- STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS
3.

CRM-M-613-2022 (O&M)
- DEVINDER SINGH

.....PETITIONER
- VERSUS
- SAHIB SINGH AND ANOTHER
AND

.....RESPONDENTS
4.

CRM-M-1779-2022 (O&M)
- DEVINDER SINGH

.....PETITIONER
- VERSUS
- SUKHJIT KAUR AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Bhupinder Banga, Advocate, for the petitioner
(in CRM-M-11554-2022 & CRM-M-11603-2022)
for respondent No.1 (in CRM-M-613-2022)
for respondents No.1 to 4 (in CRM-M-1779-2022).

Mr. Krishan Singh Dadwal, Advocate
for the petitioner (in CRM-M-613-2022 and
CRM-M-1779-2022),
for respondent No.2 to 5 (in CRM-M-11554-2022) and

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for respondent No.2 (in CRM-M-11603-2022).

Mr. J.S. Guru, AAG, Punjab.

SANDEEP MOUDGIL. J.

1. Vide this common order, I shall be disposing off all the afore-said petitions, as common question of law is involved in all the petitions.

2. CRM-M-11554-2022 has been preferred by Avtar Singh seeking quashing of the impugned order dated 16.07.2019 (Annexure P-3) passed by Judicial Magistrate Ist Class, Garhshankar vide which application under Section 319 Cr.P.C. filed by the petitioner has been partly allowed, with further prayer for setting aside the impugned order dated 14.12.2021 (Annexure P-5) passed by Additional Sessions Judge, Hoshiarpur vide which the revision filed by the petitioner against the aforementioned order dated 16.07.2019 (Annexure P-3) has been dismissed.

CRM-M-11603-2022 has been preferred by Avtar Singh seeking quashing of the impugned order dated 14.12.2021 (Annexure P-4) passed by Additional Sessions Judge, Hoshiarpur vide which the revision filed by Harpreet Singh @ Lucky against the order dated 16.07.2019 (Annexure P-3) passed by Judicial Magistrate Ist Class, has been allowed.

CRM-M-613-2022 has been preferred by Devinder Singh seeking quashing of the impugned order dated 14.12.2021 (Annexure P-12) passed by Additional Sessions Judge, Hoshiarpur vide which the revision petition filed against the order dated 15.01.2020 (Annexure P-10) by Sahib Singh has been set aside.

CRM-M-1779-2022 has been preferred by Davinder Singh seeking quashing of the impugned order dated 14.12.2021 (Annexure P-12) passed by Additional Sessions Judge, Hoshiarpur vide which the revision

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petition filed by Sukhjot Kaur, Hardeep Singh, Sukhdev Singh @ Sukha and Mohanjit Singh, was allowed whereby the order dated 16.07.2019 was set aside.

3. Learned counsel for the petitioner in CRM-M-11554-2022 has contended that the Courts below have passed the impugned orders without considering the aspect that respondents No.2 to 5 (Simranjit Kaur, Narinder Kaur, Ranjit Kaur @ Muni and Gurdip Singh) were specifically named in the DDR and specific role were attributed to them.

It has been contended by learned counsel for the petitioner in CRM-M-11603-2022 that the trial Court has passed the impugned order without considering the aspect that respondent No.2 (Harpreet Singh @ Lucky) was specifically named in the DDR and a specific role was attributed to him. Moreover, the trial Court has not considered the medical records (Annexure P-2) of the injuries suffered by the petitioner-Avtar Singh, petitioner's brother and nephew.

The contention of learned counsel for the petitioner(s) in CRM-M-613-2022 and CRM-M-1779-2022 is that all the accused-persons have been attributed specific role and six injuries have been found on the person of the petitioner, as per MLR. In fact, Varinder Singh petitioner's brother suffered four injuries and his nephew Hardeep also suffered 5 injuries as per MLR (Annexure P-2 to P-4). The said attribution is consistent with the medical evidence and receipt of the injury in the medical evidence and the ocular version given by the petitioner clearly proves the commission of the offence by the culprits.

4. Learned State counsel has submitted that FIR No. 77, dated 14.06.2017, under Sections 323, 148 and 149 IPC was registered at Police Station Mahilpur at the instance of complainant-Davinder Singh against the

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accused persons namely Avtar Singh, Santokh Singh, Lakhvir Singh, Satnam Singh, Mohanjit Singh, Sahib Singh, Hardeep Singh, Sukha @ Sukhdev Singh and Sukhjit Kaur. Subsequent thereto, Section 325 IPC was added vide DDR No. 36, dated 10.07.2017 and offence under Section 201 was added vide DDR No. 23, dated 25.05.2018. Thereafter a cross case under Sections 323, 148, 149 IPC stands registered against Davinder Singh, Varinder Singh, Hardeep Singh, Amritpal Singh, Lucky @ Harpreet Singh, Simarjit Kaur, Narinder Kaur, Vicky @ Gupreet Singh, Mani @ Ranjit Kaur and Gurdeep Singh on the statement of Avtar Singh vide DDR No. 53, dated 14.06.2017. It is further submitted that accused persons namely Mohanjit Singh, Sahib Singh, Hardeep Singh, Sukh @ Sukhdev Singh and Sukhjit Kaur, Lucky @ Harpreet Singh, Simarjit Kaur, Narinder Kaur, Vicky @ Gupreet Singh, Mani @ Ranjit Kaur and Gurdeep Singh were found innocent in an inquiry conducted by the Deputy Superintendent of Police, Sub-Division Garshankar, District Hoshiarpur, which was approved by the Senior Superintendent of Police, Hoshiarpur.

5. Heard learned counsel for the respective parties.

6. 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 un rebutted, 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.”

7. 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.;

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and (iii) also to add an accused whose name is shown in column no.2 of the chargesheet.

8. 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.”

9. 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

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(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).

10. 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.”

11. It, thus, comes out that the power of summoning under Section 319 CrPC is not to be exercised in a routine manner and the existence of more than a *prima facie* case is *sine qua non* to summon an additional accused and with a view to prevent the frequent misuse of power to summon, ordinarily, the Court should also discourage itself from summoning the person, at the very threshold of the trial, and must evaluate such material

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which has to be testified vis-à-vis the material against the accused who is already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C, ought not to be invoked.

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It is evident from the report under Section 173 Cr.P.C. that the accused namely Mohanjit Singh, Hardeep Singh, Sukha @ Sukhdev Singh and Sukhjot Kaur were found innocent in an inquiry conducted by Deputy Superintendent of Police, Garshankar, thus, there is nothing on record to summon the afore-said accused persons before the Court.

CRM-M-11603-2022

In the case in hand complainant-Avtar Singh has specifically named respondent No.2 with specific role that he being armed with deadly weapons attacked him. The Appellate Court has passed the impugned order dated 14.12.2021 (Annexure P-4) in a mechanical manner without considering the material fact that respondent No.2 has inflicted injuries on the right palm of the complainant with a wooden stick. Accordingly, a *prima-facie* case is made out against respondent No.2 to summon to face trial along-with other accused. Thus, the present petition is allowed and the impugned order dated 14.12.2021(Annexure P-4) by the ASJ, Hoshiarpur is set aside.

CRM-M-613-2022

A perusal of file reveals that Varinder Singh appeared in the witness box as PW-4 and has deposed that Sahib Singh attacked upon him with his respective weapon, which is sufficient for this Court to infer that respondent No.2 has been specifically named by Varinder Singh with the allegation that he inflicted injuries on his right arm with kirpan, thus, he is liable to be summoned for facing trial with the other accused. The Appellate

Court has passed in the impugned order in a mechanical manner without

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considering the fact that a specific allegation as levelled against the respondent No.2.

Accordingly, this Court is of the considered view that the impugned order dated 14.12.2021 (Annexure P-12) has been passed without the application of mind merely on the basis surmises and conjectures, which is liable to be quashed. As such, the present petition is allowed and the order dated 14.12.2021 (Annexure P-12) is hereby, quashed.

CRM-M-1779-2022

The complainant-Devinder Singh has deposed that Mohan Jeet Singh, Sahib Singh, Lakhbir Singh, Avtar Singh, Santokh Singh, Satnam Singh, Hardeep Singh, Sukha and Sukhjeet Kaur has come to the fields and attacked upon him with their respective weapons. Though the challan has been presented against Avtar Singh, Santokh Singh, Lakhveer Singh and Satnam Singh. The allegations against all the accused-persons is that Sukhjit Kaur was instigated all of them to injure the complainant and Varinder by raising lalkara to catch hold the complainant and not spare him. On this, Avtar Singh armed with Sariya attacked on the left ear of the complainant; Mohan Jeet Singh attacked with his Kirpan on the back of the complainant, Hardeep Singh attacked on his fingers of left hand, Sukha also attacked on the complainant with stick on the back and right shoulder, Satnam Singh attacked on left leg (front side) of the complainant with his kirpan. Thus, this Court is of the view that specific allegations have been leveled against all the accused-persons along-with their role. Accordingly, they are liable to be summoned to face trial along-with other accused-persons.

Accordingly, the present petition is partly allowed except for respondent No.1-Sukhjit Kaur. The present petition qua respondent No.1-Sukhjit Kaur is hereby dismissed.

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14. In “[Pyare Lal Bhargava v. The State of Rajasthan](#)”, AIR 1963 SC 1094, a four-Judge Bench of this Court was concerned with the meaning of the word ‘appear’. The court held that the appropriate meaning of the word ‘appears’ is ‘seems’. It imports a lesser degree of probability than proof. In “[Ram Singh & Ors. v. Ram Niwas & Anr.](#)”, (2009) 14 SCC 25, a two-Judge Bench of this Court was again required to examine the importance of the word ‘appear’ as appearing in the Section. The Court held that for the fulfillment of the condition that it appears to the court that a person had committed an offence, the court must satisfy itself about the existence of an exceptional circumstance enabling it to exercise an extraordinary jurisdiction. What is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to conviction of the persons sought to be added as an accused in the case.

15. 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.

16. 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 unrebutted, 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

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Cr.P.C., and in conformity with the binding judicial dictums referred to herein 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.

17. 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.

18. In view of the discussions made hereinabove, CRM-M-11554-2022 is dismissed, CRM-M-11603-2022, CRM-M-613-2022 are allowed and CRM-M-1779-2022 is allowed qua respondents No.2 to 4 and qua respondent No.1-Sukhjit Kaur is dismissed.

19. All the pending misc. application also disposed off.

12 FEBRUARY, 2024

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**(SANDEEP MOUDGIL)
JUDGE**

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