



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

217-2,4&6

Date of decision : 06.08.2024

1. CRR-1209-2022

Bharpur Singh Petitioner

versus

State of Punjab and another Respondents

2. CRR-1281-2022

Davinder Singh Sahota Petitioner

versus

State of Punjab and another Respondents

3. CRR-812-2023

Gurjit Singh Petitioner

versus

State of Punjab and another Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

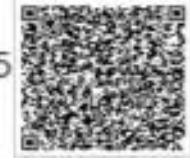
Present: Mr. M.S. Khaira, Senior Advocate with
Mr. Jaswinder Singh, Advocate
for the petitioner in CRR-1209-2022.

Mr. Gurcharan Dass, Advocate
for the petitioner in CRR-1281-2022.

Mr. A.S. Gill, Advocate
for the petitioner in CRR-812-2023.

Mr. Solomon Partap Singh, AAG, Punjab.

Mr. P.S. Ahulwalia, Advocate
for respondent No.2 in all cases.



PANKAJ JAIN, J. (Oral)

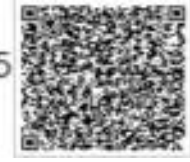
1. These revisions are directed against order dated 02.12.2021 passed by Additional Sessions Judge, Ludhiana whereby the petitioners have been summoned as an additional accused invoking power under Section 319 of the Code of Criminal Procedure, 1973 by the Trial Court.
2. FIR was registered on the statement made by Gurjeet Singh s/o Avtar Singh wherein he nominated Jagjit Singh as well as the three petitioners herein. Report under Section 173(2) was filed only against Jagjit Singh. So far as the rest of the accused are concerned, it is claimed by the counsel for the petitioners that the investigation did not conclude, though report under Section 173(2) has not been placed on record.
3. During the course of trial, Gurjeet Singh appeared as PW-1, wherein he reiterated the version as recorded in the FIR. Application under Section 319 Cr.P.C. was moved by the prosecution to summon the present petitioners as additional accused(s). Trial Court recorded finding that more than prima facie case is made out against the petitioners and summoned them to face trial under Section 302 read with Section 341 IPC. It is this order which is under challenge before this Court.
4. Learned senior counsel representing the petitioners alongwith Mr. Gurcharan Dass has referred to supplementary challan filed under Section 173(8) of the Code on 05.05.2022 to submit that the investigation of the case revealed that as per the CCTV footage, the petitioners were not found to be present on the spot at the time of



occurrence and the same is based upon inquiry conducted by DSP which stands approved by higher officials upto the level of Inspector General of Police. It has been thus contended that once cogent evidence is available on record with respect to innocence of the petitioners in form of CCTV footage, order passed under Section 319 of the Code cannot be sustained.

5. *Per contra*, Mr. Ahluwalia submits that the jurisdiction under Section 319 of the Code has to be exercised on the basis of evidence which has come before the Trial Court. Once the complainant appeared before the Trial Court and reiterated his version which led to brutal murder of two people, Trial Court rightly summoned the petitioners as additional accused(s) and no fault can be found with the order passed by the Trial Court. He further refers to the testimonies of PW-1 and PW-2 i.e. the complainant as well as eye witness to submit that the story projected on the basis of CCTV footage gets falsified from the very fact that none of the material witnesses were confronted with the CCTV footage. He further submits that so far as CCTV camera is concerned, the same was affixed at a place and thus CCTV footage recorded only those instances which came within its range. A camera fixed at a place having fixed focus cannot be expected to capture entire incident. Tits and bits captured therein cannot be relied upon to believe/disbelieve the entire scene.

6. I have heard counsel for the parties and have carefully gone through the records of the case.

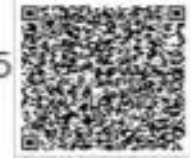


7. Counsel for the petitioners are not in position to dispute that complainant who appeared as PW-1 was present on the spot even as per the CCTV footage being relied upon by them. PW-1 complainant in his testimony before the Trial Court reiterated version recorded in the FIR and stated as under:-

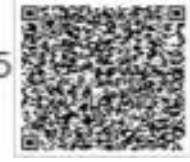
“I am agriculturist. I have been elected Sarpanch of my village in the year 2018. On 4.12.2019 I alongwith Jagdev Singh son of Balbir Singh, Balwant Singh son of Gurchet Singh, Gurpreet Singh son of Bharpoor Singh all residents of Dhandra had gone to attend the marriage function of Gurkamal Preet Singh resident of our village Kashmir Singh palace situated at G.T. road Doraha. Jagjit Singh son of Boota Singh, Bharpoor Singh son of Harnek Singh, Gurjit Singh son of Sukhdev Singh, Davinder Singh son of Bhajan Singh all residents of Dhandra had also come to attend the marriage function of Gurkamal Preet Singh at the same palace. After giving shugan to the marriage couple, I alongwith Jagdev Singh had gone to have lunch inside the hall of the marriage palace. At about 5 P.M. Bharpoor Singh raised Lalkara that Balwant Singh be not spared and he be done to death. Upon which Jagjit Singh who was carrying pistol in his right hand pointed his pistol towards Balwant Singh and aimed the fire and fired from his pistol upon Balwant Singh with the intention to kill him and which hit on the left side of chest of Balwant Singh. thereupon Gurjit Singh and Davinder Singh both raised another Lalkara loudly that nephew of Balwant Singh namely Gurpreet Singh has also come and he be not spared to give evidence and he be also



killed. Upon Jagjit Singh fired two shots from his pistol towards Gurpreet Singh, out of which one shot in the left side of chest of Gurpreet Singh and the second shot hit on the abdomen part of Gurpreet Singh. Blood started oozing out of the injuries of Gurpreet Singh and Balwant Singh. in the meantime Jaagdev Singh son of Balbir Singh intervened and he boldly caught hold the right arm of Jagjit Singh accused present in the court and made him fall on the ground. upon which another shot from the pistol of Jagjit Singh was fired which hit on the left bicep of Jagjit Singh. due to fire shots people ran helter skelter. Thereupon I and Jagdev Singh took both the injured namely Balwant Singh and Gurpreet Singh on the scorpio vehicle belonging to one Harminder Singh of our village and took them to SPS Apolo Hospital, Ludhiana, while picking up the both the injured and taking them to hospital, the clothes worn by me and Jagdev Singh got blood stained. After the examination by the concerned doctor both the injured person namely Balwant Singh and Gurpreet Singh were declared brought dead. the motive behind the incident was that Gurjit Singh son of Sukhdev Singh resident of Dhandra had fielded Baljit Singh against me in the election of Sarpanch of gram Panchayat village Dhandra. I had won the elections and Baljit Singh lost the same. All the accused persons in furtherance of their common intention have brutally murdered both Balwant Singh and Gurpreet Singh. I had got recorded my statement with the police and the same is Ex.PA and upon which I identify my signatures at Ex.Pl. Thereupon I and Jagdev Singh accompanied the police party and visited the spot where from police lifted blood from the Mat in the



Hall of the marriage Palace and was converted into parcel. from the spot 4 empty cartridges and 2 live cartridges were also lifted form the spot and were converted into parcel. from the spot one blood stained goggles and one turban pink colour was also lifted from the spot and were converted into parcel. from the spot one blood stained cap was also lifted and coveted into separate parcel and 10 sealed all the parcels with his seal bearing impression DPS and were taken into police possession vide memo Ex.PB which was witnessed b me and other witnesses. I and Jagdev Singh had also produced our blood stained clothes before the 10 and which were converted into parcel and he sealed the same bearing impression DSP and were taken into police possession vide memo Ex.PC which was witnessed by me, Jagdev Singh and other witnesses. Police inspected the spot and prepared rough site plan. My statement was recorded. from the spot we all returned back to SPS Apolo hospital, Ludhiana. at about 7.15 A.M, on 5.12.2019 I had produced blood stained clothes of deceased Balwant Singh and Gurpreet Singh before the 10 which were converted into parcels by the IO and he sealed the same with his seal DSP and the same were taken into police possession vide memo Ex.PD which was witnessed by me and other witnesses. I had also identified the dead bodies of both the Balwant Singh and Gurpreet Singh deceased during inquest proceedings and my statement Ex.PE was recorded in this regard. 1 identify accused Jagjit Singh present in the court whereas the remaining accused namely Gurjit Singh, Bharpoor Singh, Devinder Singh are not present in the court.”



8. The ground raised against the impugned order is based upon a CCTV footage relied upon by a police officer in inquiry conducted by him. It is still not clear whether CCTV footage forms part of challan or not. The best case in favour of the petitioners is that the CCTV footage is part of investigation report filed by investigating agency. Thus, the question that will arise is:-

(i) Whether the testimony of the complainant who admittedly is an eye witness to the occurrence has to be given precedence over the inquiry reports being relied upon by the investigating agency and the accused persons while exercising power under Section 319 Cr.P.C.

9. The Constitution Bench in the case of **Hardeep Singh vs. State of Punjab**, reported as **2014(3) SCC 92** precisely answered the issue. The questions framed for consideration of Constitution Bench included the following question:-

“(i) & (ii) xx

(iii) Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

10. The same was answered by the Constitution Bench observing as under:-

“69. Ordinarily, it is only after the charges are framed that the stage of recording of evidence is reached. A bare perusal of Section 227 Cr.P.C. would show that the legislature has used the terms “record of the case” and the “documents submitted



therewith”. It is in this context that the word ‘evidence’ as appearing in Section 319 Cr.P.C. has to be read and understood. The material collected at the stage of investigation can at best be used for a limited purpose as provided under Section 157 of the Evidence Act i.e. to corroborate or contradict the statements of the witnesses recorded before the court. Therefore, for the exercise of power under Section 319 Cr.P.C., the use of word ‘evidence’ means material that has come before the court during an inquiry or trial by it and not otherwise. If from the evidence led in the trial the court is of the opinion that a person not accused before it has also committed the offence, it may summon such person under Section 319 Cr.P.C.

70. With respect to documentary evidence, it is sufficient, as can be seen from a bare perusal of Section 3 of the Evidence Act as well as the decision of the Constitution Bench, that a document is required to be produced and proved according to law to be called evidence. Whether such evidence is relevant, irrelevant, admissible or inadmissible, is a matter of trial.

71. It is, therefore, clear that the word “evidence” in Section 319 Cr.P.C. means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the Court to decide whether power under Section 319 Cr.P.C. is to be exercised and not on the basis of material collected during investigation.

72. The inquiry by the court is neither attributable to the investigation nor the prosecution, but by the court



itself for collecting information to draw back a curtain that hides something material. It is the duty of the court to do so and therefore the power to perform this duty is provided under the Cr.P.C.

73. The unveiling of facts other than the material collected during investigation before the magistrate or court before trial actually commences is part of the process of inquiry. Such facts when recorded during trial are evidence. It is evidence only on the basis whereof trial can be held, but can the same definition be extended for any other material collected during inquiry by the magistrate or court for the purpose of Section 319 Cr.P.C.?

74. An inquiry can be conducted by the magistrate or court at any stage during the proceedings before the court. This power is preserved with the court and has to be read and understood accordingly. The outcome of any such exercise should not be an impediment in the speedy trial of the case.

75. Though the facts so received by the magistrate or the court may not be evidence, yet it is some material that makes things clear and unfolds concealed or deliberately suppressed material that may facilitate the trial. In the context of Section 319 Cr.P.C. it is an information of complicity. Such material therefore, can be used even though not an evidence in stricto sensu, but an information on record collected by the court during inquiry itself, as a prima facie satisfaction for exercising the powers as presently involved.

76. This pre-trial stage is a stage where no adjudication on the evidence of the offences involved takes place and therefore, after the material alongwith the charge-sheet has been brought before



the court, the same can be inquired into in order to effectively proceed with framing of charges. After the charges are framed, the prosecution is asked to lead evidence and till that is done, there is no evidence available in the strict legal sense of Section 3 of the Evidence Act. The actual trial of the offence by bringing the accused before the court has still not begun. What is available is the material that has been submitted before the court along with the charge-sheet. In such situation, the court only has the preparatory material that has been placed before the court for its consideration in order to proceed with the trial by framing of charges.

77. It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to it while making an inquiry into or trying an offence, that the court can utilize or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused.

78. This would harmonise such material with the word 'evidence' as material that would be supportive in nature to facilitate the exposition of any other accomplice whose complicity in the offence may have either been suppressed or escaped the notice of the court.



79. The word “evidence” therefore has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 Cr.P.C. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial.

80. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 Cr.P.C. The ‘evidence’ is thus, limited to the evidence recorded during trial.”

11. In view of the aforesaid dictum that the evidence to be relied upon for adjudication of application under Section 319 Cr.P.C. is the evidence that has come before the Trial Court, this Court finds that the challenge to the impugned order based upon CCTV footage is pleading precedence over the testimony of eye witness and cannot be accepted.

12. In view of above, this Court finds that the Trial Court rightly held on the basis of testimony of the eye witness that *prima facie* common intention of the petitioners was evident and thus the case of the prosecution satisfies more than *prima facie* case which is the test



prescribed under Hardeep Singh’s case (supra).

13. As a result, no ground is made out for interfering these revision petitions. Consequently, the same are dismissed.

14. A photocopy of this order be placed on the files of other connected cases.

(PANKAJ JAIN)
JUDGE

06.08.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes