

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

CRR-1263-2019 (O&M)
Reserved on: 07.05.2024
Pronounced on: 09.05.2024
2024: PHHC: 064881

JUJHAR SINGH

. . . . Petitioner

Vs.

STATE OF PUNJAB

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Barjinder Singh, Advocate,
for the petitioner.

Mr. Ramandeep Singh, Sr. DAG, Punjab.

DEEPAK GUPTA, J.

By way of this revision, under challenge is the order dated 12.10.2018 passed by Id. Additional Sessions Judge, Sangrur, whereby petitioner has been summoned under Section 319 CrPC to face trial for offences under Section 323, 341, 506, 379, 379-B, 356 and 201 read with Section 34 of the Indian Penal Code, 1860 in a case arising out of FIR No.3 dated 06.01.2017 registered at Police Station Chhajali, District Sangrur.

2.1 Perusal of the paperbook would reveal that FIR was lodged on the complaint of one Narinder Pal Singh, as per which he was running a jewellery shop in Sarafa Market at Sunam. Mandeep Sharma, Harjit Sharma and Jujhar Singh (*petitioner herein*) were running a chit fund company, who had invested an amount of ₹11 lakh of the complainant in their company and cheated him in this regard, regarding which FIR No.144 dated 16.08.2013 under Section 420/406/120B IPC was registered at Police Station City Sunam. It was further stated by Narender Singh that he had already filed a

cheque bounce case, in which Mandeep Sharma and petitioner had been convicted and the appeal was pending. It was alleged that on the date of incident i.e. 06.01.2017 at about 1:30 PM, he along with his wife, after collecting ₹55,000/- from Manapuram Finance, left in their car, when another car stopped near them. Four persons descended from car armed with weapons and surrounded their car. It was alleged that Mandeep Sharma and Jujhar Singh came from the backside. Jujhar Singh caught hold of him and other persons pulled him out of the car. Mandeep Sharma gave repeated hits on his legs with iron rod. Other unknown persons also caused injuries to him. It was also alleged that those assailants had also taken away ₹55,000/- from his pocket and had stolen his Samsung mobile. Complainant in injured condition was taken to the hospital.

2.2 After registering the FIR, investigation was carried out. The MLR revealed nine injuries on the person of injured- complainant Narender Pal. One of the injuries was found to be grievous, at which Section 325 IPC was added. Mandeep Sharma was arrested on 07.05.2017. During enquiry made on the representation of the petitioner, carried out by DIG, Patiala Range, Patiala, petitioner-Jujhar Singh was found to be innocent. Final report under Section 173 CrPC was filed, in which petitioner was kept in Column No.2 of the challan.

2.3 However, during trial, after the statement of PW1 Narender Pal Singh, application under Section 319 CrPC was moved and petitioner was summoned to face trial.

3. It is contended by ld. counsel that matter was thoroughly investigated by the police and he was found to be innocent. Even as per the FIR version, no specific role was attributed to the petitioner except his

presence at the spot; that petitioner was working as a Lab Technician at Dr. Lal Path Lab, Nabha Centre, Nabha, which was 45 kilometers from the place of occurrence at Sunam and that it is only after examining the CCTV footage of the Lab and other record that petitioner had been declared as innocent. Ld. counsel contended further that apart from the statement of PW1 Narender Pal made during trial, there was no evidence showing the involvement of the petitioner in the crime, and therefore, application under Section 319 CrPC has been wrongly allowed.

4. Apart from above, ld. counsel for the petitioner also submits that complainant Narender Pal has already compromised the matter with main accused Mandeep Sharma and the FIR has already been quashed by a Coordinate Bench of this Court vide order dated 07.12.2022 in CRM-M-50837-2022 qua co-accused Mandeep Sharma. Copy of that order has also been placed on record.

5. Respondent No.2-complainant was duly served. However, he did not come forward so as to contest this petition.

6. Ld. State counsel though conceded that petitioner had been declared innocent during investigation, but submitted that on the basis of evidence recorded during trial, he has been rightly summoned under Section 319 CrPC.

7. I have considered submissions of both the sides and have appraised the record carefully.

8. The issue regarding the scope and extent of power of the court to arraign any person as an accused during the course of inquiry or trial in exercise of the power under section 319 Cr.P.C. has been set at rest by a Constitutional Bench of Hon'ble Supreme Court in *Hardeep Singh's*

case (supra) followed by another pronouncement in ***Babubhai Bhimabhai Bokhiria Vs. State of Gujarat and others, (2014) 5 SCC 568; 2014 (2) RCR (Criminal) (SC) 915.***

9. After reviewing various precedents, Hon'ble Apex Court summarized the legal position in ***Hardeep Singh's case (supra)*** in the following words:

"Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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.

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 Cr.P.C."

10. After referring to the aforesaid authority of Constitutional Bench, Hon'ble Supreme Court held in ***Babubhai Bhimabhai Bokhiria's case (supra)*** as under:

"Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher."

11. From the legal position as above, it follows that Section 319 of the Code of Criminal Procedure (CrPC) becomes applicable, when during the trial after the filing of the challan and framing of the charge-sheet, evidence is presented indicating the involvement of a person, who was not initially charged by the police. In such cases, if the evidence establishes the person's complicity, the court may proceed to include them in the proceedings. To apply Section 319 CrPC, evidence led should be such that it shows more than a *prima facie* case as is 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. Thus, mere *prima facie* case is not sufficient so as to summon a person to face prosecution under Section 319 CrPC. Court must find material more than *prima facie* case, though material should not be of such a nature that conviction can be recorded.

12. In the present case, even as per the FIR version, the attribution to the petitioner is that he had caught hold of the petitioner. The main accused Mandeep Sharma and other assailants are attributed to be armed with weapons and having caused injuries. There is no such attribution to the petitioner.

13. Apart from above, the FIR has already been quashed qua the main accused Mandeep Sharma vide order dated 07.12.2022 in CRM-M-50837-2022.

14. In view of the aforesaid facts and circumstances, merely on the basis of statement of PW1 Narender Pal, made during trial, the trial Court was at fault in holding that there was more than a *prima facie* case so as to summon the petitioner, who had been found innocent during investigation.

15. Consequently, the present petition is hereby accepted.

Impugned order dated 12.10.2018 passed by Id. Additional Sessions Judge, Sangrur, is hereby set aside.

09.05.2024

Vivek

(DEEPAK GUPTA)
JUDGE

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes
Yes