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2024:PHHC:114962



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

CRR-3441-2015

Date of Decision: September 03, 2024

PALWINDER SINGH

....Petitioner(s)

VERSUS

STATE OF PUNJAB & ORS

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Rupinder Kaur Thind, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

Ms. Shagun, Advocate for
Mr. H.S. Lalli, Advocate
for respondent No.13.

SANDEEP MOUDGIL, J.(ORAL)

1. This petition has been filed by the petitioner seeking modification in the order dated 06.07.2015 passed by the learned Addl. Sessions Judge, Amritsar whereby the application filed by the prosecution for summoning of additional accused has partly been allowed.

2. Learned counsel for the petitioner prays for modification in the order passed by the trial Court to the effect that Bachittar Singh shall also face trial in the light of the fact that PW-1 Palwinder Singh has categorically named the proposed accused having given a datar blow on chest which injury has also been corroborated with the medical evidence.



3. Learned State counsel though could not controvert the aforesaid fact and therefore, this Court deem it appropriate to direct the summoning of Bachittar Singh as accused who shall be examined by the prosecution including his cross-examination in the next three dates before the trial Court including the one already fixed i.e. 12.09.2024.

4. Heard.

5. Before proceeding with the matter, it is apposite to reproduce what has been contemplated in Section 319 CrPC, which reads as under:-

“...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.”

6. The Constitution Bench of the Supreme Court in Hardeep Singh vs. State of Punjab, (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 chargesheet or any other person who might be an accomplice.” xxxx xxxx xxxx

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



8. In Sukhpal Singh Khaira vs. The 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



(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 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 CrPC, ought not to be invoked.

12. Present petition is allowed particularly modifying the order passed by the trial Court to the effect that Bachittar Singh shall also face trial in the light of the fact that PW-1 Palwinder Singh has categorically named the proposed accused having given a datar blow on chest which injury has also been corroborated with the medical evidence as has been argued on behalf of the petitioner before this Court.

13. It is made clear that trial Court shall after examination of Bachhitar Singh proceed further with the trial and pass the judgment in accordance with law within a period of two months from the date of receipt of certified copy of the order.

14. Petition in the aforesaid terms stands party allowed. Order dated 06.07.2015 passed by the trial Court is accordingly modified.

15. Petition stands disposed of.

(SANDEEP MOUDGIL)
JUDGE

03.09.2024
Sangeeta

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