

2024:PHHC:167839



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRR 2555 of 2018
Date of Decision: 27.08.2024

Nisar and others ...Petitioners
Versus
State of Haryana and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Kunal Dawar, Advocate with
Mr. Mayank Aggarwal, Advocate
for the petitioners.

Mr. Rajinder Kumar Banku, DAG, Haryana.

Mr. Abhishek Singh, Advocate
for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioners have filed the present revision petition against the impugned order dated 11.07.2018 passed by the Additional Sessions Judge, Palwal, whereby, the application under Section 319 Cr.P.C. filed by the prosecution was allowed.
2. In the present case, the FIR (Annexure P-2) was registered against the petitioners and others on the basis of a statement made by Ansar Ali and the same has been reproduced below:-

“To, SHO Police Station Bahin. It is requested that I Ansar Ali s/o Isab Caste Mew R/o Alimev and I have studied upto 10+2. Today near Ulflah School near to well around the boundary of well on Panchayat land Alim, Jannu, Mustak S/o Sardar and Jilsad S/o Mustak were digging the foundation at 9.30 a.m., who had constructed Ulflah School forcefully within the Panchayat land. When my father and uncle Jafar were going to sell "Tudi" taking tractor then seeing this, my father and uncle stopped the tractor and said that why you persons are digging foundation in the Panchayat land, on this all the above persons raised "Lalkara" to beat my father and uncle and they have beaten of my father and uncle with stones, kick and fist blows. My uncle and father raised alarm then above accused persons bring lathi, Ballam, Farsa, Country made pistol and in support of Tufiq, Mufiq S/o Nisar, Nisar S/o Kishan, Dinu S/o Jammu, Abdul Raheem S/o Isha, Yakub S/o Safi, Iqbal S/o Ratti also got guns, lathi and farsa. My family members also after hearing the noise of my father Ishab and uncle Jafar came running to save them and by the time Nissar asked his son Mufik to fire a bullet by giving his licensed gun and on hearing this Mufik immediately fired a gun shot from his gun to kill, which hit on right shoulder of my uncle Jafar and my father was given a injury by Jannu S/o Sardar on his right calf muscle. Due to which my father fell down then Iqbal S/o Ratti gave a lathi blow on the back of my father Ishab, Dilshad with the country made pistol fired in air, Tofik S/o Nisar gave a lathi blow on back of my uncle Jafar, Yakub S/o Safi gave blow from the reverse side of farsa on left thigh of my uncle Jafar All S/o Sardar gave

Ballam blow from reverse side on right hand at the bullet injury of my uncle. That my uncle Jafar and Ishab have been given injuries using fist and kicks blows, lathi and sticks by Aleen Jaanu Mustak, Dilshad, Tofik, Mufik, Nisar, Deenu, Abdul Raheem and Yakub Iqbal. Deenu S/o Jumma with gun in his hand fired in the air. That many persons of the village were present at the spot of occurrence and Nazeen S/o Abdul, Kadir and Sazid S/o Abudal Subhan Mew R/o Ali Mev intervening with the help of villagers and these persons while going back were threatening that in future if anyone ever tried to stop them then they will kill them. Thereafter these persons damaged our tractor using lathi, gidd, stones. Thereafter, I took my father and uncle for treatment to Medical College Nullhar. Abid S/o Asru, Islam S/o Jalkha etc. accompanying me. Applicant Ansar Ali.”

3. Learned counsel for the petitioners contends that the complainant was not an injured witness and had levelled allegations against 11 persons regarding causing injuries to the two injured, namely, Jaffar and Isub. The occurrence had taken place at about 09.30 a.m. on 22.03.2017 and Jaffar and Isub had allegedly received injuries. The police party reached Nalhad Hospital, Nuh, but the injured refused to make a statement, even though, they were fit for statement. However, on the statement made by respondent No. 2, the FIR was registered. In the FIR, the allegations were levelled against 11 persons, namely, Aleem, Janu, Mustak, Dilshad, Tofiq, Iqbal, Mufiq, Nisar, Deenu, Abdul and Yakub. As per the FIR, the occurrence was in two parts. In the first part, the allegations were

levelled against accused No. 1 to 4 and in the second part, the allegations were levelled against accused No. 5 to 11. As per the allegations in the FIR, accused No. 1 to 4 caused injuries to both the injured and, thereafter, accused No.5 to 11 also caused injuries to the injured in the present case. During the investigation, it was found that accused No. 5 to 11 which includes the present petitioners, were falsely involved and no shot was fired from the licensed pistol of Nisar. It was also found that gun shot was fired by Dilshad, which had hit on the right shoulder of Jaffar. Learned counsel has also referred to the statement of Jaffar (Annexure P-3) in this regard. He further contends that in the present case, the investigation was conducted by three officials, namely, DSP (Hathin), another DSP of Hathin and DSP of Khanna and were found to be innocent. As per the learned counsel, Jaffar had suffered only four injuries on his person and only one gun shot injury was there and three injuries were abrasions only. Even, Isub, injured had also suffered three injuries, which were complaints of pain only.

4. Learned counsel for the petitioners further contends that Jaffar was examined as PW3 vide statement annexure P-6 and he had attributed specific injuries to the accused, who had challaned by the police. The said witness had also named the petitioners, while levelling vague allegations against them. Still further, injuries attributed to the petitioners did not found mention in the MLR of Jaffar. Learned counsel further refers to the roles attributed to the

petitioners and submits that no corresponding injuries were suffered by Jaffar. Learned counsel further contends that later on, without any sufficient material on record, the petitioners were also ordered to be summoned to face the trial under Section 319 Cr.P.C. The trial Court passed a non speaking order and completely failed to appreciate that the allegations levelled by the witnesses which were not substantiated by any medical evidence.

5. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioners on the grounds that the petitioners were specifically named in the present case and were rightly summoned by the trial Court. The petitioners were named from the very beginning and the petition deserves to be dismissed by this Court.

6. I have heard learned counsel for the parties and perused the record.

7. Powers of the Court to proceed under Section 319 Cr.P.C. even against those persons who are not arraigned as accused, cannot be disputed. This provision is meant to achieve the objective that real culprit should not get away unpunished. A Constitution Bench of this Court in *Hardeep Singh v. State of Punjab & Ors., 2014(1) RCR (Criminal) 623 : 2014(1) Recent Apex Judgments (R.A.J.) 384 : (2014) 3 SCC 92*, explained the aforesaid purpose behind this provision in the following manner:

“8.The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under Cr.P.C indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished.

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12. Section 319 Cr.P.C. springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said

accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 Cr.P.C.?

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19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence”.

8. It also goes without saying that Section 319 Cr.P.C., which is an enabling provision empowering the Court to take appropriate steps for proceeding against any person, not being an accused, can be exercised at any time after the charge-sheet is filed and before the pronouncement of the judgment, except during the stage of Section 207/208 Cr.P.C., the committal etc., which is only a pre-trial stage intended to put the process into motion.

9. In **Hardeep Singh's** case (supra), the Constitution Bench has also settled the controversy on the issue as to whether the word 'evidence' used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and indicates the evidence collected during

investigation or the word 'evidence' is limited to the evidence recorded during trial. It is held that it is that material, after cognizance is taken by the Court, that is available to it while making an inquiry into or trying an offence, which the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court. The word 'evidence' has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. It means that the power to proceed against any person after summoning him can be exercised on the basis of any such material as brought forth before it. At the same time, this Court cautioned that the duty and obligation of the Court becomes more onerous to invoke such powers consciously on such material after evidence has been led during trial. The Court also clarified that 'evidence' under Section 319 Cr.P.C. could even be examination-in-chief and the Court is not required to wait till such evidence is tested on cross-examination, as it is the satisfaction of the Court which can be gathered from the reasons recorded by the Court in respect of complicity of some other person(s) not facing trial in the offence.

10. The moot question, however, is the degree of satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and the related question is as to in what situations this power should be exercised in respect of a person named in the FIR but not charge-sheeted. These two aspects were also specifically dealt with by

the Constitution Bench in **Hardeep Singh's case** (supra) and answered in the following manner:

*"95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 Cr.P.C., though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in **Vikas v. State of Rajasthan [2013(4) RCR (Criminal) 948 : 2013(6) Recent Apex Judgments (R.A.J.) 356 : (2014) 3 SCC 321]**, held that on the objective satisfaction of the court a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.*

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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 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 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.

(emphasis supplied)"

11. In order to answer the question, some of the principles enunciated in Hardeep Singh's case (supra) may be recapitulated:

“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”.

12. Applying the said principles of law to the facts of the present case, it is apparent that the trial Court had summoned the petitioners in a very casual manner and the order passed by the trial Court is non speaking. The trial Court simply stated that there was strong and cogent evidence against the persons sought to be summoned as additional accused and except the said findings, there was no other discussion of evidence. Thus, the impugned order is liable to be set aside only on the said ground alone. Apart from that, this Court has also considered the submissions made by the learned counsel for the petitioners. In the present case, Jaffar was examined as PW2 and he had suffered only four injuries, which were attributed to

Aleem, Dilshad, Jannu and Mustaq, who were already facing the prosecution. Apart from that, all the six petitioners were allegedly attributed the same role/injury, but the allegations against the petitioners were not supported by medical evidence. The trial Court failed to appreciate that except the statement of PW2 Jaffar, there was no other evidence or material to support the summoning of the petitioners under Section 319 Cr.P.C. as additional accused in the present case. Apart from that, four different officers of the rank of DSP had examined the matter from different angles and detailed reports were prepared, which clearly exonerated the petitioners. However, by ignoring the material on record, the impugned order was passed by the trial Court.

13. In view of the above, the present petition is allowed and the impugned order dated 11.07.2018 passed by the Additional Sessions Judge, Palwal, is ordered to be set aside.

14. All the pending applications, if any, are also disposed off.

27.08.2024

(N.S.SHEKHAWAT)

amit rana

JUDGE

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