

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3112-2018
Reserved on: 24.01.2024
Date of Pronouncement: 31.01.2024

RICHPAL @ MAKKAR -Petitioner

Versus

STATE OF HARYANA -Respondent

CORAM: HON’BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Ms. S.K. Verma, Advocate
for the petitioner.

Mr. Bhupender Singh, D.A.G., Haryana.

Mr. Jitender Dhanda, Advocate
for the complainant.

KULDEEP TIWARI, J.

1. Through the instant petition, the petitioner has assailed the order dated 07.08.2018, as passed by the learned Additional Sessions Judge, Hisar, whereby, after allowing the application under Section 319 of the Cr.P.C., as preferred by the complainant through public prosecutor, the petitioner has been summoned to face trial for the commission of offences under Sections 307, 325, 201, 34 read with Section 120-B of the IPC, and, Section 25 of the Arms Act, in FIR No. 78 dated 19.04.2017, registered at P.S. Bass.

2. The learned counsel for the petitioner has challenged the order (supra), primarily on the ground that, the impugned summoning proceedings are tainted with a fundamental legal defect, as despite there

being absolutely no case made out against the petitioner, based upon the evidence, as adduced before the learned trial Court concerned, yet he has erroneously been summoned to face trial. In fact, the application, as moved under Section 319 of the Cr.P.C, was nothing but a sheer abuse of the process of law.

FACTUAL MATRIX

3. The genesis of the prosecution case is embodied in the statement made by one Mahender son of Sube Singh (hereinafter referred to as the 'complainant'), alleging therein that, two boys fired gunshots upon him, with intention to kill him. The relevant extract of his statement, as encapsulated in the Final Report (Annexure P-1), is extracted hereinafter:-

"...Today, I and my son Navdeep were going to Grain Market Bas for selling wheat by loading in our tractor trolley. I was driving tractor and my son Navdeep was sitting on the right side seat of the tractor. When, I reached near Budhawala pond in the grove (bani) while driving tractor, then a loud explosive voice came from rear side. It appears to be that tyre of tractor has burst. When I turned back, then saw two boys riding on a motorcycle. The boy sitting ahead on the motorcycle was wearing helmet and other one was muffled face and wearing sky blue (kabutri) shirt and blue jeans, directly fired shot upon me with a pistol having in his hand, which hit near the elbow of my right arm. I immediately turned the tractor towards the motorcyclist in order to save my life. They directly fired shot upon me for killing while coming in front of tractor, which hit near ankle of my left leg acrossing the tractor. Thereafter, I tried to save my life by hiding while jumping from the tractor. Both the boys directly fired shot upon me while coming near, which hit on the knee of my right leg. Meantime, a private bus reached there and on hearing the noise of bus horn, both that boys ran away from the spot along with their weapon by riding on their Bajaj Discover Black colour motorcycle. The boy sitting on the rear side of the motorcycle was having 2 pistols i.e. one was of black colour and other was of

bright steel colour and the boy driving motorcycle was having one pistol. I do not know these boys. Both these boys have fired many shots upon me with the intention of killing. Strict legal action be taken against both the unknown motorcyclists, who fired shot upon me....”

4. The hereinabove extracted statement led to registration of the present FIR against unknown motorcyclists. However, during the course of investigation, on 27.05.2017, one Rajbir son of Sube Singh got recorded his statement that Sudhir son of Satbir is also, apart from the unknown motorcyclists, involved in the present incident, inasmuch as, he had informed the assailants about the location of the complainant. Based upon this statement, Sudhir son of Satbir was arrested in the present case on 17.06.2017. Thereafter, accused Joginder, Banarsi and Bijender, who were arrested in another FIR No.538/17, registered at P.S. City Jind, suffered disclosure statement(s), thereby making admission *qua* their culpability for commission of the present incident, at the instance of one Raju Pannu (stated to be in Australia and declared P.O. in the present case). Resultantly, the investigating officer concerned was led to, after obtaining production warrants of these accused from the Court concerned on 07.07.2017, interrogate them in the present case, and, upon sufficient inculpatory evidence being surfaced against them, they were also arrested in the present case.

5. After completion of investigation, the Final Report under Section 173 Cr.P.C. was presented against accused Sudhir, Joginder @ Jogi, Bijender @ Nehla, and, Banarsi @ Kala, before the learned trial Court.

6. Since the accused (*supra*) had, in their disclosure statement(s), stated that they had stayed in the “Kotha” of Richpal @ Makkar (present

petitioner) and they were supplied the pistols, as used in the present incident, from the said Kotha, therefore, investigation *qua* role of the present petitioner was also carried out, however, no inculpatory evidence was found against him and he was declared innocent.

7. What caused grievance to the complainant, was the petitioner becoming declared innocent by the investigating officer and consequently, he was driven to, through public prosecutor, institute an application under Section 319 of the Cr.P.C., thereby seeking summoning of the present petitioner as an additional accused.

8. The learned Additional Sessions Judge concerned, through drawing the impugned order dated 07.08.2018, allowed the application (*supra*) and summoned the petitioner to face trial. Therefore, the petitioner, who is aggrieved from his summoning, is before this Court, through the instant petition.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

9. The learned counsel for the petitioner, in his assailing the impugned order dated 07.08.2018, has argued that despite the petitioner being declared innocent by the investigating officer, and, despite the learned Additional Sessions Judge concerned, who through the impugned order, making observation therein, that the name of the petitioner does not surface anywhere either in the statement of the complainant or in the FIR, yet it erred in summoning the petitioner, merely on a flimsy ground that, the petitioner had provided weapons to the main accused.

10. The learned counsel for the petitioner has further argued that the innocence of the petitioner gains strength from the statements of 16 persons, whose statements were recorded during investigation by the

investigating officer, and wherein, they all have stated in unambiguous terms that the petitioner does not have any concern or connection with this case. Insofar as the allegations *qua* stay of the main accused in the Kotha, which allegedly belongs to the petitioner, is concerned, the same are also frail allegations, as the statements of aforesaid 16 persons also reveal that the said Kotha always remained open and was used by various persons for taking rest.

11. The next argument, as raised by the learned counsel for the petitioner, is rested upon the factum that, the name of the petitioner did not even surface in the first two disclosure statements of the main accused, rather it had surfaced in the third disclosure statement, as made by accused Jogender on 09.07.2017. Therefore, the disclosure statement(s) are not confidence inspiring, rather lack creditworthiness.

12. Lastly, the learned counsel for the petitioner has argued that though calls did take place *inter se* the petitioner and accused Sudhir on 11.04.2017, however, the inference, as drawn therefrom by the learned Additional Sessions Judge concerned, *qua* the petitioner being involved in the crime is totally wrong. The reason being that, the petitioner runs a shop in Grain Market Bass, and, on 11.04.2017, the father of accused Sudhir had brought his wheat crop to the shop of the petitioner and that's why calls were made *inter se* the petitioner and accused Sudhir, and that too, only on 11.04.2017.

SUBMISSIONS OF LEARNED STATE COUNSEL, AND, LEARNED COUNSEL FOR THE COMPLAINANT

13. *Per contra*, the learned State counsel, who is assisted by the learned counsel for the complainant, has opposed the arguments made by

the learned counsel for the petitioner. By placing heavy reliance upon the disclosure statement(s) of the main accused, he has justified the summoning of the petitioner, inasmuch as, the role of the petitioner becomes unveiled in the said disclosure statement(s). Therefore, a prayer is made that the instant revision petition be dismissed, being devoid of merits.

ANALYSIS

14. Before embarking upon the process of evaluating the contentions raised by the learned counsels for the contesting litigants, and thereupon, penning down any opinion upon the validity of the impugned summoning order, it is deemed imperative to first capture an overview of some significant legal propositions.

15. The scope of Section 319 of the Cr.P.C. has been considered and enunciated by the Hon'ble Supreme Court and by this Court also, in a catena of judgments, whereupon, it has been held that, during the pendency of inquiry or trial, the trial Court has jurisdiction to proceed against a person for the offence, which he appears to have committed, if, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that such person, not being the accused, has committed any offence, for which he could be tried together with the accused, under Section 319(1) of the Cr.P.C.

16. The Hon'ble Supreme Court in ***"Sohan Lal vs State of Rajasthan"***, AIR 1990 SC 2158, while explaining the scope of Section 319 of the Cr.P.C., has held that, this Section empowers the trial Court to proceed against a person, not being the accused, **"appearing to be guilty"** of an offence. The relevant extract of ***Sohan Lal's*** judgment is extracted hereinafter:-

“This section empowers the Court to proceed against persons not being the accused appearing to be guilty of offence. Sub-sections (1) and (2) of this section provide for a situation when a Court hearing a case against certain accused person finds from the evidence that some person or persons, other than the accused before it is or are also connected in this very offence or any connected offence; and it empowers the court to proceed against such person or persons for the offence which he or they appears or appear to have committed and issue process for the purpose. It provides that the cognizance against newly added accused is deemed to have been taken in the same manner in which cognizance was first taken of the offence against the earlier accused. It naturally deals with a matter arising from the course of the proceeding already initiated. The scope of the section is wide enough to include cases instituted on private complaint.”

17. Moreover, in **“Hardeep Singh Vs. State of Punjab and Others”, (2014) 1 RCR (Criminal) 623**, the Constitution Bench of the Hon’ble Supreme Court has, besides making consideration *qua* the degree of satisfaction required to invoke the provisions of Section 319 of the Cr.P.C. to arraign an accused, also rendered an answer thereto. The relevant extract of this judgment is reproduced hereinafter:-

“85. Thus, in view of the above, we hold that power under Section 319 Cr.P.C. can be exercised at the stage of completion of examination in chief and court does not need to wait till the said evidence is tested on cross-examination for 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 the trial in the offence.

Q. (iv) What is the degree of satisfaction required for invoking the power under Section 319 Cr.P.C.?

86. Section 319(1) Cr.P.C. empowers the court to proceed against other persons who appear to be guilty of offence, though not an accused before the court.

The word "appear" means "clear to the comprehension", or a phrase

near to, if not synonymous with "proved". It imparts a lesser degree of probability than proof.

87. In Pyare Lal Bhargava v. The State of Rajasthan, AIR 1963 Supreme Court 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(3) RCR (Criminal) 501 : 2009(4) Recent Apex Judgments (R.A.J.) 261 : (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.

88. 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 : 2013(11) SCALE 23, 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.

89. In Rajendra Singh (Supra), the Court observed :

"Be it noted, the court need not be satisfied that he has committed an offence. It need only appear to it that he has committed an offence. In other words, from the evidence it need only appear to it that someone else has committed an offence, to exercise jurisdiction under Section 319 of the

Code. Even then, it has a discretion not to proceed, since the expression used is "may" and not "shall". The legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction under this section. The expression "appears" indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under Section 319 of the Code or not."

90. In *Mohd. Shafi (Supra)*, this Court held that it is evident that before a court exercises its discretionary jurisdiction in terms of Section 319 Cr.P.C., it must arrive at a satisfaction that there exists a possibility that the accused so summoned in all likelihood would be convicted.

91. In *Sarabjit Singh & Anr. v. State of Punjab & Anr.*, 2009(3) RCR (Criminal) 388 : 2009(4) Recent Apex Judgments (R.A.J.) 144 , while explaining the scope of Section 319 Cr.P.C., a two-Judge Bench of this Court observed :

"....For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.....Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. While framing charge in terms of Section 227 of the Code, the court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction. Whether a higher standard be set up for the purpose of invoking the jurisdiction under Section 319 of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof viz. (i) an extraordinary case, and (ii) a case for sparingly (sic sparing) exercise of jurisdiction, would not be satisfied." (Emphasis added)

92. In *Brindaban Das & Ors. v. State of West Bengal*, 2009(1) RCR

(Criminal) 672 : 2009(1) Recent Apex Judgments (R.A.J.) 400 , a two-Judge Bench of this Court took a similar view observing that the court is required to consider whether such evidence would be sufficient to convict the person being summoned. Since issuance of summons under Section 319 Cr.P.C. entails a de novo trial and a large number of witnesses may have been examined and their re-examination could prejudice the prosecution and delay the trial, the trial court has to exercise such discretion with great care and perspicacity. A similar view has been re-iterated by this Court in *Michael Machado & Anr. v. Central Bureau of Investigation & Ors.*, 2000(2) RCR (Criminal) 75 .

93. However, there is a series of cases wherein this Court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 Cr.P.C., has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The Court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further. (Vide: *State of Karnataka v. L. Munishwamy & Ors.*, AIR 1977 Supreme Court 1489; *All India Bank Officers' Confederation etc. v. Union of India & Ors.*, AIR 1989 Supreme Court 2045; *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia*, (1989) 1 SCC 715; *State of M.P. v. Dr. Krishna Chandra Saksena*, 1997(1) RCR (Criminal) 556 : (1996) 11 SCC 439; and *State of M.P. v. Mohan Lal Soni*, 2000(3) RCR (Criminal) 452).

94. In *Dilawar Babu Kurane v. State of Maharashtra*, 2002(1) RCR (Criminal) 451, this Court while dealing with the provisions of Sections 227 and 228 Cr.P.C., placed a very heavy reliance on the earlier judgment of this Court in *Union of India v. Prafulla Kumar Samal & Anr.*, AIR 1979 Supreme Court 366 and held that while considering the question of framing the charges, the court may weigh the evidence for the limited purpose of finding out whether or

not a prima facie case against the accused has been made out and whether the materials placed before this Court disclose grave suspicion against the accused which has not been properly explained. In such an eventuality, the court is justified in framing the charges and proceeding with the trial. The court has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but court should not make a roving enquiry into the pros and cons of the matter and weigh evidence as if it is conducting a trial.

95. In Suresh v. State of Maharashtra, 2001(2) RCR (Criminal) 278, this Court after taking note of the earlier judgments in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, 1991(1) RCR (Criminal) 89 and State of Maharashtra v. Priya Sharan Maharaj, 1997(2) RCR (Criminal) 634, held as under :

"9.....at the stage of Sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction."
(Emphasis supplied)

96. Similarly in State of Bihar v. Ramesh Singh, AIR 1977 Supreme Court 2018, while dealing with the issue, this Court held :

".....If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground

for proceeding with the trial....."

97. In Palanisamy Gounder & Anr. v. State, represented by Inspector of Police, 2006(2) RCR (Criminal) 235 : (2005) 12 SCC 327, this Court deprecated the practice of invoking the power under Section 319 Cr.P.C. just to conduct a fishing inquiry, as in that case, the trial court exercised that power just to find out the real truth, though there was no valid ground to proceed against the person summoned by the court.

98. 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.

99. 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. 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.

18. The hereinabove discussed legal propositions elucidate that much stronger evidence, rather than mere probability of complicity and mere existence of *prima facie* case, is required to proceed against any person, under Section 319 of the Cr.P.C. It is now the settled proposition of

law that, mere suspicion cannot constitute the bedrock for summoning of a person, in exercise of powers conferred by Section 319 of the Cr.P.C., rather exercise of this provision must be anchored upon existence of cogent evidence and not in a casual or cavalier manner. 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.

REASONS FOR ALLOWING THE INSTANT PETITION

19. In the instant case, there is no wrangle that the complainant had, at the very first instance, not named the petitioner as an accused. In fact, the FIR was registered against unknown persons and it was only after lapse of more than a month that, during investigation, the brother of the complainant had suffered a statement, wherein, he alleged one Raju son of Rajpal to be involved in the incident, as he believed that it was Raju, who had in conspiracy with three other persons, got fired gunshots upon the complainant. He further alleged that the whereabouts/location of the complainant was supplied to Raju by one Sudhir son of Satbir. Therefore, based upon this statement, co-accused Sudhir was arrested on 17.06.2017 and his mobile was also seized. Subsequently, co-accused Joginder, Banarsi and Bijender, who were arrested in another FIR No.538/17, registered at P.S. City Jind, suffered disclosure statement(s), thereby making admission *qua* their culpability for commission of the incident, whereupon, they were brought on production warrants and after interrogation, when sufficient inculpatory evidence surfaced against them, they were also arrested in the present case.

20. Interestingly, the initial two disclosure statements of co-

accused Joginder, Banarsi and Bijender, did not reveal the name of the petitioner, rather his name surfaced in their third disclosure statement, inasmuch as, it was disclosed therein that, prior to commission of the incident, they had stayed in the “Kotha” (*a room constructed in fields generally for the purpose of keeping agricultural appliances and tube-well motor, electricity connection*) constructed in the fields of the present petitioner, and, the pistols used in the incident were also supplied there to them.

21. The third accusatory disclosure statement of the co-accused (*supra*), as suffered against the petitioner, resulted in an investigation being carried out by D.S.P. Kaptan Singh *qua* the role of the petitioner in the commission of the incident. In this investigation, the D.S.P. concerned joined about 16 persons and upon interrogation, the accusations made against the petitioner in the third disclosure statement proved to be fallacious, inasmuch as, neither any link could be established *inter se* the petitioner and co-accused, nor any inculpatory role could be assigned to the petitioner in the commission of the incident. The relevant findings of the D.S.P. concerned, as encompassed in Annexure P-4, are extracted hereinafter:-

“Till this time, interrogation has been conducted from all the present persons individually, jointly and secretly and openly. From interrogation of the present persons, no any connection of accused Joginder @ Jogi, Bijender @ Nahla and Banarsi @ Kala arrested in the case has been found with Richpal @ Makkar as Richpal @ Makkar run commission agent's shop in new Anaj Mandi Bas and verified to be respected person of the village and the room (kotha) has constructed in the field, in which, the persons working in the fields and the passerby and the employees of Forest and Irrigation department usually used to come and has been verified to do rest in

the Kotha in Summer. The probability of this thing cannot be denied that the accused arrested in the case stayed in this vacant Kotha and corridor, but no connection of Richpal @ Makkar has been found with above accused persons. Upon which, Richpal @ Makkar has been found innocent in the case. Direction has been given to the investigation officer SI Jaivir Singh CIA Staff, Jind that proceedings be initiated against Raj Singh @ Nihal Pannu s/o Rajpal caste Jat resident of Mohla now residing in Australia by got doing extradition of accused by contacting with Interpol and charge sheet against the arrested accused be filed in the court immediately. Persons present have been freed after proper instructions. Case file is being sent back to CIA Staff, Jind. I am busy in Govt. work.”

22. However, what formed the backbone for summoning of the petitioner, despite his being declared innocent during investigation, was the sole testification of the complainant as PW1.

23. However, what emanates from the examination-in-chief of the complainant is that, he deposed therein that, **he had subsequently come to know about involvement of the present petitioner and other accused in the incident.** The relevant extract of his examination-in-chief is reproduced hereinafter:-

“... Then I came to know that Sudhir son of Satbir had given information about my location to Richpal @ Makkar son of Balwant, resident of Village Bass and Raju to kill me. Sudhir was interested in going to Australia, his uncle Raju is living in Australia who conspired the whole conspiracy to kill me. Then I came to know that the boys who fired upon me resided some time in the kotha constructed in the fields of Makkar who also provided food and weapons to these boys. Jogender, Banarsi, Bijender and Sudhir accused are present in the Court. Accused Richpal alias Makkar and accused Raju

24. Therefore, the improvement, as made by the complainant in his examination-in-chief, over his previously made statement to the police

under Section 161 of the Cr.P.C., wherein, he did not speak anything against the present petitioner or any other accused, erodes the efficacy of his testification made in court. Nonetheless, what further ensues from the above improvement, is that, the testification of the complainant as PW1, falls within the category of “*hearsay evidence*”, as he just simply deposed what was informed to him, whereas, he apparently did not have any knowledge about involvement of the present petitioner. Resultantly, the summoning of the petitioner, on such weak piece of ocular testimony, does not pass the test, as laid down in *Hardeep Singh’s case (supra)*.

25. Moreover, the learned summoning court concerned, though did consider the material placed before it by the investigating officer, whereby the petitioner was declared innocent, however, it discarded the same on the ground that the conclusion arrived at by the investigating officer is without any reasonable explanation. The learned summoning court concerned has not made any discussion as to whether the contradictory testification of the complainant corroborates the purported inculpatory evidence, as presented by the investigation agency, and/or, whether his sole testification is sufficient enough for summoning of the petitioner. The relevant extract of the impugned summoning order is reproduced hereinafter:-

“12. Admittedly, the present case was registered on the statement of Mahender Singh wherein he has not named the proposed accused as assailant but as is clear from investigation of the present case, the proposed accused Richpal was found involved in helping accused persons to stay in the Kotha of his fields and in arranging the pistol to the accused persons and in providing information to the accused persons with regard to the complainant. It has also come in the investigation proceedings that the investigation against the accused Raju and Richpal under section 120B IPC is yet to be completed and after completion of investigation against the accused, the separate

supplementary challan against them be filed. The investigation against the accused Raju and Richpal was conducted by DSP Kaptan Singh who found Richpal innocent in the present case. No explanation has been given by DSP Kanta Singh as to how Richpal was found innocent whereas in the initial investigation, Richpal was found involvement in the commission of crime present case. Merely saying Richpal innocent without any reasonable explanation cannot discard the investigation earlier conducted in which Richpal was found involved in the present case.

13. Keeping in view the above discussed facts and circumstances coupled with above-cited legal proposition, this Court is of the considered view there is sufficient prima-facie evidence against the proposed accused to infer that he was also involved in the incident along with the accused who are facing trial.”

26. The issue, whether the learned trial Court concerned was, or, was not well within its jurisdiction to summon the petitioner, on the basis of material collected by the investigating agency, has also been examined in ***Hardeep Singh’s case (supra)***, and, the relevant extract is reproduced hereinafter:-

“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."

27. On the touchstone of the law laid down by the Hon'ble Supreme Court in *Hardeep Singh's case (supra)*, it is explicitly clear that the material produced before the learned trial Court concerned could have been utilized only to corroborate the evidence recorded by the Court to invoke the powers conferred under Section 319 of the Cr.P.C. However, in the instant case, neither the learned trial Court has framed any opinion, nor made any conclusion as to whether there is any material to support the ocular testimony of the complainant, which was the sole and weak piece of evidence before it, at the stage of passing the impugned summoning order.

FINAL ORDER

28. For all the reasons (supra), this Court finds merit in the instant revision petition and is constrained to allow the same. Consequently, the instant revision petition is **allowed**, and, the impugned summoning order dated 07.08.2018 is hereby set aside.

29. Needless to say that, the complainant/prosecution agency shall be at liberty to, at a subsequent stage, invoke the provisions of Section 319 of the Cr.P.C., in case there emerges cogent and convincing evidence warranting summoning of the petitioner to face trial.

(KULDEEP TIWARI)
JUDGE

31.01.2024
devinder

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