

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1250-2024 (O&M)

Decided on 26.09.2024

Alimuddin & Ors.

... Petitioners

VS.

State of Haryana & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Dr. Pankaj Nanhera, Advocate and
Mr. Pradeep Duhan, Advocate for the petitioners

Mr. BS Virk, Sr.DAG Haryana

Mr. APS Mann, Advocate and
Mr. Navjot Singh Sidhu, Advocate for respondent No.2

Sandeep Moudgil, J.

(1). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the order dated 18.05.2024 passed by Addl. Sessions Judge, Nuh vide which application filed by the complainant-respondent No.2 under Section 319 CrPC has been allowed and the petitioners have been summoned to stand trial with the other co-accused in case FIR No.58 dated 18.03.2021 under Sections 148/149/323/452/302 IPC (Section 120-B IPC added later on) registered at Police Station Nagina, District Nuh.

(2). Learned counsel for the petitioner submits that in the present case, the petitioners along with other persons were named in the FIR allegedly for attacking the complainant and his family members for the reason that the petitioner and other accused persons were restrained from digging well on the land of the complainant and therefore, they planned to attack the complainant party. It is contended that total 22 persons were named in the FIR, however, no specific role has been attributed to them inasmuch as final report under Section

173 CrPC submitted by DSP, Punhana was only against 5 persons, namely, Hanif, Rakmuddin, Sadiq, Abbas and Arifna. He further states that various special investigation teams found the petitioners to be innocent including as per reports dated 22.10.2022 (Annexures P3 & P4, respectively).

(3). Further argument raised is that there is contradiction in the deposition made by PW2 complainant and the version of the FIR which fact was not given any due weight by the trial court inasmuch as there is no cogent evidence available with the prosecution except the statement of the complainant and interested persons on the basis of which the petitioners have been summoned under Section 319 CrPC.

(4). Learned State counsel in unison with learned counsel for the respondent No.2 submit that the petitioners who have been proposed to be summoned were actively involved and participated in the commission of crime leading to murder of Majid which stands corroborated from the deposition of PW2 Nasir. It is further submitted that in the challan, no cogent reason has been given for declaring the petitioners as innocent, hence the trial court rightly did not consider the same and proceeded to summon the petitioners. Reliance is placed on the decision of the Constitution Bench of the Apex Court in **Hardeep Singh vs. State of Punjab, (2014) 3 SCC 92** wherein it has been categorically held that Section 319 CrPC can be exercised at the stage of completion of examination in chief, as the court is empowered to proceed against those who appear to be guilty of offence and whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further.

- (5). Heard learned counsel for the parties and gone through the record.
- (6). A perusal of the impugned order passed by the trial court that an application under Section 319 CrPC was filed by the prosecution to summon as many as 13 accused persons. The trial court noticed the fact that on 18.03.2021, complainant's father, namely, Majid was attacked in the house wherein Hanif assaulted him with farsa on his head; Alimuddin and Rukmuddin assaulted him with axe. In order to prove its case, the prosecution examined Dr. Jagmohan as PW1 who conducted the post mortem of the deceased. PW2 Nasir, the complainant, deposed that all the accused persons were armed with lathi, danda, farsa and iron rod; they trespassed the house; Hanif gave farsa blow from blunt side and Rukmuddin gave iron blow on the head of the deceased; Alimuddin gave lathi blow on left eye besides this, Altaf and Mattan pelted stone at complainant himself besides fist blow by Sabir and lathi blow by Abbas on the back of his head.
- (7). The judgment also reveals that though as per the version of the doctor PW1, the deceased sustained three ante-mortem injuries and PW2 deposed regarding complicity of the accused persons, however, no specific role has been attributed to the proposed accused and that fresh evidence has come on record in the deposition of PW2 Nasir regarding the role played by the accused Alimuddin, Altaf, Mattan and Sabir – the petitioners. The trial court allowed the application under Section 319 CrPC on the ground as discussed in para 12, which is necessary to be extracted, which reads as under:-

“12. From the deposition of PW1 and PW2, more than prima facie case which is required at the time of framing of charge is not made out against all the proposed accused. However, more than prima facie case but short of satisfaction to the extent that the evidence if goes unrebutted would lead to conviction is made out against proposed accused Alimuddi, Altaf, Mattan and Sabir.”

(8). A perusal of the aforesaid observation and reasoning given by Additional Sessions Judge, Nuh is not convincing, inasmuch as it depicts a situation of confusion in the mind of the Court. While passing the said order it has been observed in one breath that more than *prima facie* case which is required at the time of framing of charge but it is not made out on deposition of PW1 and PW-2 who in the same breath further observed that if short of satisfaction, the evidence if goes unrebutted would lead to conviction is made out against the petitioner-proposed accused Alimuddi, Altaf, Mattan and Sabir. If at one instance, on the basis of the deposition of doctor PW1 and the complainant PW2, it was observed that *prima facie* case was not made out against all the proposed accused, then how can the trial court selectively form its opinion considering both the depositions as a *prima facie* case against the petitioners who are one among all the proposed accused persons. While there is sufficient evidence to suggest involvement in a crime, it must also exhibit stronger indicators of complicity than mere probability. The trial court ought to have found more substantial evidence than what is typically required just to move forward with the charges merely on the basis of depositions of interested witnesses.

(9). While summoning the accused under Section 319 CrPC, it has to be borne in mind that the power under Section 319 is a discretionary and

extraordinary power and can only be exercised in those cases where strong and cogent evidence occurred against the person sought to be summoned from the evidence led before the Court and should not be exercised in a casual and cavalier manner but the trial court without circumspecting the settled principle of law and record of the case, has summoned the present petitioners only because the complainant while appearing as prosecution witness has named the present petitioner with regard to alleged occurrence and only on the basis of deposition, it cannot be inferred that the petitioner was involved in the alleged occurrence, moreso when the version of the complainant is a result of improvement of his earlier statement which form the basis of the FIR coupled with the fact that there was a previous civil litigation going on between the parties in regard to the disputed *kunda*.

(10). The Supreme Court in **Juhru v. Karim, 2023 SCC OnLine SC 171**, in the light of the views taken by the Constitution Bench in **Hardeep Singh vs. State of Punjab, (2014) 3 SCC 92** as also in **Sukhpal Singh Khaira vs. The State of Punjab, (2023) 1 SCC 289**, 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). The Supreme Court further held 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 CrPC.

(12). The invocation of Section 319 CrPC requires a judicious assessment of the evidence available and a balanced consideration of the rights of both the accused and the society at large and the Court in a bid to unveil the truth must meticulously weigh the necessity of summoning additional accused persons against the potential prejudice it might cause to the accused's right to a fair trial. Section 319 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. 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 is much higher.

(13). In the present case, the trial court has failed to appreciate that the matter was investigated by various police teams constituted and other agencies

also, but no evidence of any kind was forthcoming against the petitioners and they were ultimately declared as innocent. The assertion made by the petitioners that they were not present at the site/place of occurrence stands corroborated by the investigation reports and the video footage and these material evidences were essentially required to be examined by the trial court and not merely just relying upon the deposition of the complainant. This all the more becomes crucial when the parties are already entangled in a civil litigation and therefore, false implication or exaggeration of the actual incident by the complainant party cannot be ruled out.

(14). Accordingly, this petition is allowed and the order dated 18.05.2024 passed by Addl. Sessions Judge, Nuh is hereby quashed *qua* the petitioners.

26.09.2024
V.Vishal

(Sandeep Moudgil)
Judge

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |