

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-30962-2019 (O&M)

Reserved on 30.01.2024

Pronounced on 03.04.2024

Narender

... Petitioner

VS.

State of Haryana & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Prabhjeet Singh Sullar, Advocate for the petitioner

Mr. Pawan Kumar Jhanda, DAG Haryana

Sandeep Moudgil, J.

This order shall dispose of CRM-M-30962-2019 and CRM-M-40619-2019 as common issues are involved. However, for the sake of order, CRM-M-30962-2019 is treated as the lead case.

The petitioner has approached this Court challenging order dated 2.6.2018 passed by Judicial Magistrate Ist Class, Safidon wherein the petitioner has been ordered to be summoned with the aid of Section 319 Cr.P.C. and also order dated 20.5.2019 passed by learned Additional Sessions Judge, Jind whereby the aforesaid summoning has been upheld.

Learned counsel for the petitioner has submitted that although as per the FIR lodged at the instance of Suman, the accused namely Sunil, Narinder and others had inflicted injuries to his son namely Jatinder, but when the aforesaid Jatinder stepped into witness box as PW-3 he did not name the petitioner to be amongst his assailants and categorically stated that it was Sunil, Anil and Ravinder who had inflicted injuries to him from reverse side of 'Gandasa', 'Jelly' and sticks etc.

Learned State counsel submitted that on 07.09.2017, the trial court vide order dated 07.09.2017 has framed charges u/s 148,149,323,325,341,506 IPC. During the trial of the case, three prosecution witnesses i.e. complainant- Suman was examined as PW-1 on 03.10.2017, Jitender S/o Pale Ram, eye witness was examined as PW2 on 07.12.2017 and injured Jitender S/o Joginder examined as PW-3 on 19.01.2018 and made deposition regarding involvement of Narender-petitioner and Sushil and Anil Ss/o Suresh in commission of offence. Thereafter an application u/s 319 Cr.P.C. was filed to summon them to face the trial of the case as an additional accused. The learned Judicial Magistrate 1st Class, Safidon vide order dated 02.06.2018, Annexure P-3, allowed the application filed u/s 319 Cr.P.C. and summoned the accused namely Narender-petitioner S/o Sh. Lahna, Sushil and Anil Ss/o Suresh to face the trial of the case as an additional accused.

He further submitted that the petitioner and co-accused filed criminal revision petition before the Sessions Judge, Jind against the order dated 02.06.2018 passed by the Judicial Magistrate 1st Class, Safidon, however, the Additional Sessions Judge, Jind vide order dated 20.05.2019, Annexure P-2, dismissed the criminal revision filed by the petitioner and others and upheld the order dated 02.06.2018 passed by the Judicial Magistrate 1st Class, Safidon summoning them to face the trial of the case. He also informed that there are 11 prosecution witnesses and out of which three prosecution witnesses have been examined.

Heard learned counsel for the parties and gone through the record.

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. The trial court has summoned the present petitioner 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 only moreso when the version of the complainant is a result of improvement of his earlier statement which form the basis of the FIR and also the fact that there was a previous enmity between the parties. Further the version put forth by the complainant was found to be false in the investigation while deposing as PWs and without leading any material to support the so called verbal/ocular version or any other corroborative evidence in order to show the involvement of the present petitioner in the alleged occurrence.

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."

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 additional accused, ordinarily, the Court should 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.

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.

On perusal of the FIR coupled with the supplementary statement suffered by the complainant, it is clear that he has attributed to the petitioner Narender being armed with *gandasi* but neither there is any specific role attributed to him nor is there any other incriminating material to reflect that the injured was inflicted grievous injury by the petitioner. That being so, the order of trial court as well as the revisional court cannot be said to be based on such evidence which raises strong probability of conviction while summoning the petitioner.

Accordingly, this petition is allowed and the order dated 2.6.2018 passed by JMIC, Safidon wherein the petitioner has been ordered to be summoned with the aid of Section 319 Cr.P.C. and also order dated 20.5.2019 passed by learned Additional Sessions Judge, Jind whereby the aforesaid summoning has been upheld, are hereby quashed.

03.04.2024
V.Vishal

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

(Sandeep Moudgil)
Judge

Yes/No
Yes/No