

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1699-2023

Date of Decision: 08.01.2024

Dalbir Singh

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Ms. Anju Sharma, Advocate for the petitioner

Mr. Rajiv Verma, DAG Punjab

SANDEEP MOUDGIL, J

1. By filing the present revision petition under Section 401 Cr.P.C., the petitioner has assailed the order dated 31.01.2020 passed by the Additional Sessions Judge, Bathinda whereby an application for calling additional accused under section 319 CrPC has been declined.

2. Learned counsel for the petitioner contends that the impugned order passed by the trial Court suffers from grave illegality, perversity inasmuch as the police has wrongly declared the accused/respondents No.5 to 10 namely, namely, Shivkaran Singh @ Nikka, Harjinder Singh, Karamdeep Singh @ Lalli, Gurpreet Singh @ Gopi, Jiwan Singh @ Jeona & Gurwinder Kaur as innocent despite there being sufficient evidence.

3. He further strenuously argues that before declaring the accused persons namely Harjinder Singh and Jivan Singh as innocent on the basis of the inquiry, no opportunity of hearing was ever afforded to the son of the deceased or the complainant which is against the principles of natural justice.

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

5. 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 un rebutted, 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.”

6. 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.

7. 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.”

8. 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 splitup 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 splitup (bifurcated trial).

9. 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.”

10. 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.

11. In the present case, on perusal of the judgment passed by the trial Court dated 31.01.2020, this Court is of the considered view that the said judgment is well reasoned as the testimony of complainant does not reveal about the specific weapon with which the accused persons were armed with moreover no specific role has been attributed to the persons of which the petitioner is seeking summoning as additional accused under section 319 of CrPC.

12. Another fact that needs to be considered is that the petitioner/complainant was never the eye-witness to the alleged occurrence rather he has made his statement on the basis of hearsay and the law is settled that power under section 319 CrPC is to be exercised cautiously and sparingly and not as a matter of routine as innocent should not be made to suffer on the whims and fancies of the complainant.

13. The reason recorded by the trial court specifically at the para 13,14,15,16,18 of the impugned judgement dated 31.01.2020 to the mind of this court is totally appreciable and sufficient material was there on record for not rightly calling them as additional accused.

14. It is for the trial court to evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weight and value, as has been testified against those already facing trial and in the absence of any credible evidence, the power under [Section 319](#) CrPC ought not be invoked.

15. The Constitution Benches in **Hardeep Singh** (supra) and **Sukhpal Singh Khaira** (supra) have cautioned that power under Section 319 CrPC is a

discretionary and extraordinary power which should be exercised sparingly and only, in those cases, where the circumstances of the case so warrant and the crucial test as noticed above 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. It is imperative to add here 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, more or less, carry the same weight 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.

16. Accordingly, there is no merit in the present revision petition and the same is hereby dismissed.

08.01.2024
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(SANDEEP MOUDGIL)
JUDGE

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