

2024:PHHC:111160



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

115

CRR-1368 of 2024 (O&M)

Date of Decision: 30.07.2024

Gurvinder Singh

...Petitioner

Versus

State of Punjab and another

... Respondents

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

Present : Mr. Piyush Sharma, Advocate, for the petitioner.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present revision against the impugned order dated 14.05.2024 passed by the Court of Additional Sessions Judge, Ferozepur, whereby, the application moved by the prosecution under Section 319 Cr.P.C. was ordered to be dismissed.
2. Learned counsel for the petitioner contends that the trial Court had misappreciated the evidence in the present case and the respondent No. 2 was liable to be summoned as an additional accused to face the trial alongwith the accused already facing the trial. Learned counsel further contends that even, respondent No. 2 was armed with a baseball bat at the time of the occurrence and had participated in the commission of the crime. As per the petitioner, initially at about 08.30/9.00 p.m. on 14.08.2019, after taking dinner, the petitioner had covered a distance of 4/5 acres away from the village and he was encircled by some youngsters. Out of those boys,

Charanjit Singh and Narinder Singh had caught hold of his arms whereas Kuldeep Singh gave a blow with a *Kirch* on the left side of his chest. The petitioner managed to rescue himself and ran towards his house. However, on the way Usha Rani and Paramjeet Kaur were standing with baseball bats in their hands. Even, both the ladies chased the petitioner till his house and entered his house. The respondent No. 2 and Paramjeet Kaur caught hold mother of the petitioner and had beaten her and had pulled her from her hair. Even seeing the medical condition of the petitioner, all the accused fled away from the spot with their respective weapons and the petitioner was shifted to the Civil Hospital Ferojpur and, thereafter, the petitioner was further taken to DMC, Ludhiana.

3. Learned counsel for the petitioner further contends that during the course of trial, the statements of PW1 Gurwinder Singh and PW2 Raj Kumar (Annexures P-2 and P-3, respectively) were recorded by the trial Court and specific role was attributed to respondent No. 2. However, the trial Court overlooked the material evidence against respondent No. 2 and the application was wrongly dismissed.

4. I have heard learned counsel for the petitioner and perused the case file carefully.

5. Section 319 Cr.P.C. provides for powers of the High Court to proceed against other persons, who were also appearing to be guilty of the offence and the same has been reproduced as under:-

“319. Power to proceed against other persons appearing to be guilty of offence—

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then—

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced”.

Sub-section (1) of Section 319 leaves it to the judicial discretion of the Court, where the trial is progressing to summon a person as an accused (who is not arrayed as an accused in trial), if evidence has appeared before the Court that such a person has committed an offence for which he should be tried alongwith with the other accused, who were already arraigned as accused before the trial Court. This judicial discretion is very limited by the circumstances

which have been stated in sub-section (1) of Section 319 Cr.P.C. Once there is a satisfaction of the Court that there is evidence before it, that accused had committed an offence, the Court can proceed against such a person. However, if the evidence does not *prima facie* show the involvement of the accused, such discretion may be not exercised by the trial Court.

6. The scope and ambit of Section 319 Cr.P.C. has been discussed and dealt with in detail of the Constitution Bench judgment of ***Hardeep Singh Vs. State of Punjab and others*** reported in (2014) 3 SCC, wherein, it has been held as under:-

“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.”

5. In Hardeep Singh (supra), this court further said that the Court only has to see at the state of Section 319, whether a prima facie case is made out although the degree of satisfaction has to be much higher.

“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 CrPC, 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**, 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.*

In Para 106 it stated as under:

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” it 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.”

7. Now advertent to the facts of the present case, it is apparent that in the initial occurrence, Usha Rani, respondent No. 2

was not stated to be present alongwith Charanjit Singh, Narinder Singh and Kuldeep Singh, co-accused, who had allegedly caused injuries to Gurvinder Singh. However, she was mentioned in the later part of the statement of the complainant and was shown armed with a baseball bats. However, neither any specific injury had been attributed to her nor there was any medico legal report, which could show the involvement of respondent No. 2 in any manner. The complainant had suffered an injury with a sharp edged weapon and no medico legal report was prepared with regard to the injuries suffered by Raj Kaur, mother of the complainant. Thus, apparently, sufficient evidence was not available on the record, which may warrant summoning of the respondent No. 2 as an additional accused before the trial Court. Even otherwise, the trial Court has passed a well reasoned order, based on due appreciation of evidence and there is no ground, which impels this Court to take a different opinion and to deviate from the findings recorded by the trial court.

8. Finding no merits, the present petition is ordered to be dismissed.

30.07.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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