

2024:PHHC:164065



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204-I

CRM-M-38628-2023 (O&M)
DECIDED ON:28.10.2024

JASWINDER SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

... RESPONDENTS

AND

204/2

CRM-M-51983-2023 (O&M)

AMARJEET SINGH @ AMARJEET

... PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Nipun Bhardwaj, Advocate
for the petitioner (in CRM-M-38628-2023).

Mr. Ajay Kumar Rana, Advocate
for the petitioner (in CRM-M-51983-2023).

Mr. Chetan Sharma, DAG, Haryana.

Ms. Gursimran Walia, Advocate
for respondent No.2-Dilbagh Singh.

SANDEEP MOUDGIL, J

Since identical issues are involved in the present cases, hence, the
same are being decided by a common order with the consent of the parties.

However, for the facilities of reference, the facts are being taken from CRM-M-38628-2023 titled as **“Jaswinder Singh Versus State of Haryana and another”**.

1. Relief Sought:-

By way of filing the afore-said petitions, the petitioners are seeking quashing of the impugned order dated 27.07.2023 (Annexure P-5) passed by learned Additional Sessions Judge, Kaithal in criminal case bearing No.83, 2018, titled as **“State vs. Jaspal Singh etc.”** in FIR No. 139, dated 29.06.2017, under Sections 323, 324, 325, 326, 506 and 34 IPC, Police Station Cheeka, District Kaithal whereby, a well reasoned order dated 11.11.2021 (Annexure P-3) passed by Sub Divisional Judicial Magistrate, Guhla dismissing the application under Section 319 Cr.P.C. filed by respondent No.2-complainant has been set aside and petitioners have been summoned as additional accused to face trial with the accused who are already before the Court.

2. Facts:-

The facts as narrated in the FIR reads thus:-

“Statement of Sh. Dilbhag Singh-son of Kali Ram caste Jat resident of Village Sinh Police station Cheeka District kaithal and age 26 years Mb. No. 7357645944. Stated, that I am resident of above said address and agriculturist by profession. We are having dispute of agriculture land with Dharam Singh etc. today dated 25.06.2017 , we reach over the compromise in the police station. Dated 27.06.2017 at about 7.00 P.M. we were working in our field after putting the motor in the tube well. In mean time my uncle Dharam Singh son of Sarda Ram, Gurpal Singh son of Dharam Singh, Jaspal Singh son of Dharam Singh, Amarjit Singh son of Sarda Ram, Jaswinder Singh son of Sarda Ram, Gurjant Singh son

of Jaswinder Singh came on the spot. Amarjit Singh came with Tractor and other came on foot. Dhram Singh was armed with Lathi, Gural Singh was armed with Lathi, Jaspal was armed with Gandasi, Jaswinder Singh was armed with Lathi, Gurjant was armed with Gandasi. Amarjit Singh gave a Lalkara. catch them, we will teach a lesson for entering in the field, after this Dharam Singh give a Lathi blow on my right arm and Jaspal Singh attacked upon me with Gandasi and I raised my right hand to save me and Gandasi blow rest on my hand. In mean time Amarjit Singh and Gural Singh gave a Lathi blow, which hit on my right arm and I fell down and all of them started beating me with lathies. I shouted," Mar Diya" "Mar Diya", then my father kali Ram came from the house to rescue me and they also start beating my father with Lathis and Gandasi. Jaswinder Singh gave Lathi blow on the right hand of my father and thereafter, all assailants gave the Lathi and Gandasi blow to me and my father. We received many injuries. All assailants ran away from the spot with their respective weapons and threaten us to kill, if again we entered in said land. We reach at our home and we reach in hospital for treatment and I was referred to G.H kaithal. We are getting the treatment. These assailants have given the injuries to us without any reason. Legal action is to be taken against them,. I got recorded my statement, heard and found correct.”

**3. Submissions:-
On behalf of petitioner(s):-**

Learned counsel for the petitioner(s) has contended that the impugned order dated 27.07.2023 (Annexure P-5) is based upon conjectures and surmises. There is no evidence to connect the petitioner(s) with the alleged offence. It is further contended that the police has investigated the matter thoroughly and found that the petitioners are innocent. Thereafter, the police has presented the report under Section 173 Cr.P.C after keeping the petitioners

in column No.2 but the learned Revisional Court has not considered the evidence and police report.

On behalf of respondent-State as well as respondent No.2:-

Learned State counsel as well as counsel for respondent No.2-complainant has submitted that in the FIR, a specific role has been attributed to the petitioners. The role attributed to the petitioner-Jaswinder Singh is that he gave lathi blow on the left elbow of the complainant and on the right arm of his father and petitioner-Amarjeet gave a lathi blow on the right arm of the complainant. In view of the specific role attributed to the petitioners, they have rightly been summoned by the Revisional Court to face trial along-with the other accused.

Heard learned counsel for the respective parties at length.

4. Analysis:-

The court's observations highlight the coherence and consistency of the complainant's testimony regarding the alleged assault by the proposed accused, Amarjeet and Jaswinder. The complainant's initial version clearly identifies both individuals at the scene, attributing specific roles and injuries to them, which is crucial for establishing their involvement in the incident. In his testimony as PW1, the complainant reiterated these allegations, detailing how Jaswinder struck him with a Lathi on his left elbow and Amarjeet did the same on his right arm. Additionally, it was noted that Jaswinder also attacked Kali Ram, the complainant's father, with a Lathi blow to his right arm. The medical evidence supports these claims: the complainant had a bruise on his left forearm corresponding to Jaswinder's alleged blow, while Kali Ram's injury—a fracture of the third metacarpal of his right hand—aligns with the attack attributed to

Jaswinder. The court emphasized that these injuries are corroborated by medical records, reinforcing the credibility of the complainant's account. This thorough examination of both testimonial and medical evidence illustrates a strong foundation for the allegations made against Amarjeet and Jaswinder.

The Constitution Bench of the Supreme Court in “Hardeep Singh vs. State of Punjab and others”, (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 charge-sheet or any other person who might be an accomplice.”

XXXXXX XXXXX XXXXX XXXXX

“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 unrebutted, 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.”

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.

In “**Sukhpal Singh Khaira vs. 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.”

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 split-up 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 split-up (bifurcated trial).

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.”

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.

5. Decision:-

In view of the discussions made hereinabove, this Court is of the view that the trial Court has passed the impugned order 27.07.2023 (Annexure P-5) rightly and in accordance with law, which needs no interference of this Court.

Accordingly, both the petitions are dismissed and impugned order dated 27.07.2023 (Annexure P-5) passed by Additional Sessions Judge, Kaithal vide which the petitioners have been summoned to face trial along-with the accused, is, hereby, upheld.

Pending criminal misc. application, if any, shall disposed off.

Interim order passed by this Court stands vacated.

28.10.2024

Sham

**(SANDEEP MOUDGIL)
JUDGE**

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