



106 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1357-2021 (O&M)
Date of Decision: 07.03.2024

Rajesh Kumar and others ...Petitioners

Vs.

State of Haryana and Anr. ...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Rajinder Kumar Banku, Deputy Advocate General, Haryana.

Mr. Parminder Singh, Advocate
for respondent No.2.

N.S.Shekhawat J.

1. The present revision petition has been preferred against the order dated 13.09.2021, passed by the Court of Additional Sessions Judge, Karnal, whereby the application under Section 319 Cr.P.C filed by the prosecution was allowed and the petitioners namely Rajesh Kumar, Sagar @ Bittoo, Neeraj and Ankit were also summoned as an additional accused to face the trial for commission of the offences punishable under Sections 323,324,307,506 read with Section 34 IPC and under Section 25 of Arms Act.

2. As per the case of the prosecution, on 09.02.2020, Mukesh Kumar, accused and Satbir Singh, complainant, both residents of Village Rasulpur Khurd, District Karnal were admitted in Hospitals at Karnal in injured condition and the police reached the hospitals to record the statements of the injured. Initially, Mukesh Kumar, accused was found discharged on 12.02.2020 and his statement was recorded by the police, which is as under:-



Statement of Mukesh Kumar son of Sumer Chand resident of Rasulpur Khurd Police Station Sadar Karnal and age 24-254 years. It is stated that I am resident of the above said address and do the job in Group-D in DCH Karnal. On dated 9.2.2020, I and Satbir Singh son of Ram Dhari resident of Rasulpur Khurd were playing Volleyball in the Government Middle School in the village. At about 2.30-3.00 P.M. in the afternoon, an argument between us started on one point with each other. Satbir Singh was in the opposite team. Satbir Singh suddenly came towards me and on coming itself, he gave slaps and fist blows to me and when Satbir Singh started giving knife blow in my chest, then I lifted my right hand upward, then the knife hit on my head and on my right hand and Amarjit Singh son of Udai Singh, Vivek son of Ram Kishan, Ravi son of Sultan Singh also came at the spot and they also caused injuries to me with lathi and stick on my back. Satbir Singh has the licensed gun. Satbir Singh was giving threat to me to kill me. Thereafter, I became unconscious and fell down and my uncle, Rajinder Singh son of Daya Ram and Rajesh son of Nathu Ram shifted me to the Government Hospital Karnal and I remained admitted there for three days. The doctor has discharged me. The above said Satbir Singh son of Ram Dhari, Amarjit Singh son of Udai Singh, Vivek son of Ram Kishan, Ravi son of Sultan Singh residents of Rasulpur Khurd had caused injuries to me, while playing volley ball, due to the disagreement on a point. Legal action be taken against him. I have recorded my statement before you, heard and it is correct. Sd/- Mukesh Attested HC Randhir Singh PS Sadar, Karnal dated 13.2.2020.

3. Thereafter, on 14.02.2020, the statement of Satbir Singh, complainant in the present case, was recorded by the police, which reads as under:-

Accused Satbir Singh son of Ramdhari resident of Rasulpur Khurd



got recorded his statement which is as follows :- Satbir Singh son of Ramdhari resident of Rasulpur Khurd, P.S. Sadar, Karnal, aged 26 years, it is stated that I am resident of the abovementioned address. I work in the army and have come here on holidays. On dated 09.02.2000 around 2:15-2:30 PM in the school of Rasulpur Khurd, while we were playing volleyball, then Mukesh Kumar son of Sumer Chand resident of Rasulpur Khurd was also playing with us and was in the opposite team and with regard to points we had a fight. I was talking to a member of the other team and Mukesh son of Sumer Chand started hitting me with slaps on my neck and rest of the team members separated us. After that, Mukesh started saying that I should wait here and he will come back in 10-15 minutes. Mukesh and Neeraj, Sagar, Ankit residents of Rasulpur Khurd brought lathi, danda in their hands. Mukesh had a knife in his hands. On entering the school ground, Neeraj grabbed me and Mukesh stabbed me with a knife on my back and then under my arm, which hit me near my heart, which got into my lungs and then twisted the knife. Sagar @ Bittoo and Ankit gave injuries on my back and legs with lathi and danda and I raised alarm of "Mar Diya Mar Diya", then they started running from the spot with their respective weapons. When they reached near the school gate, Rajesh son of Babu Ram was standing there and all five of them standing near the school gate, Rajesh started saying "chaaku maar ke tassali kar di, agar dobara zinda gaon me aayega to mai goli se uda dunga." Because of the blood loss, I became unconscious and I came to know today that at that time Amarjeet son of Uday Singh and Sultan Singh son of Jay Singh resident of Rasulpur Khurd brought me to DCH KNL and then the doctor gave me first aid and then my family members took me to Shri Ramchandra Memorial Hospital, got me Karnal and got me admitted. Mukesh, Neeraj, Sagar @ Bittoo, Ankit son of Ramchandra injured me and Rajesh son of Nathu Ram threatened to shoot me. Initiate legal proceedings against them, statement is recorded, heard and it is



correct. Sd/- Satbir attested HC Randhir Singh, P.S Sadar, Karnal dated 14.02.2020.

4. After recording of the abovementioned both the versions, the police had conducted the investigation and it was found that Neeraj and Sagar, petitioners No. 2 and 3 were not present at the spot, whereas, Rajesh and Ankit, petitioners No.1 and 4 were not even present in the village on the date of incident. Consequently, all the petitioners were found innocent by the police and were kept in column No.2. Ultimately, the prosecution moved an application for summoning all the accused in the present case and they were also ordered to be arrayed as an additional accused in the present case along with Mukesh Kumar, who was already facing the trial.

5. At this stage, it also requires mention that during the course of investigation, the injured was medico-legally examined and it was found that he had suffered the following two injuries:-

1. *An incised wound inverted shape 3 x 1 x 1 cm muscle deep on the lateral border of Oxila left side 15 cm from the left nipple fresh bleeding present crepitus present. Advised X-Ray chest and surgeon opinion.*
2. *An incised wound 1 x 0.5 cm on the left side in the middle of back with fresh bleeding muscle deep. Advised X-Ray chest and Surgeon opinion.*

6. Learned counsel for the petitioners contend that the petitioners have been wrongly ordered to be summoned by the Trial Court, by clearly overlooking the peculiar facts of the case and the evidence led by the prosecution. Learned counsel submits that in the present case, the investigation was conducted thrice by three different Deputy Superintendent of Police and it



was finally verified by the Superintendent of Police, Karnal and thereafter, it was concluded that all the petitioners were not present at the time of incident and had not participated in the occurrence in any manner. He further contends that the prosecution had moved an application under Section 190 Cr. P.C for taking cognizance against the present petitioners. However, vide the order dated 05.02.2021, Annexure P-3, the Court of Additional Chief Judicial Magistrate, Karnal had dismissed the said application by passing the detailed order. Learned counsel further contends that even the respondent No.2/injured had suffered two injuries, which were attributed to Mukesh Kumar, main accused, who was already facing the prosecution. He further contends that false roles have been assigned to the petitioners and the ocular account was not corroborated by the medical evidence in the present case. Thus, neither any specific allegation was levelled against the petitioners nor any overt act had been attributed to them, consequently, the powers under Section 319 Cr.P.C were wrongly exercised by the Trial Court.

7. On the other hand, learned State counsel as well as learned counsel appearing on behalf of respondent No.2 vehemently argued that the impugned order had been passed by the Trial Court after the examination of PW-1, Satbir Singh, injured in the present case. From a perusal of the testimony of PW-1 (Annexure P-4), it was amply clear that all the four accused had actively participated with Mukesh Kumar, main accused. Even Neeraj, Sagar @ Bittu and Ankit had come with weapons. Mukesh was having a knife in his hand, whereas, the remaining accused were having *dandas* and *bindas* (*handles of spade*) in their hands. Neeraj caught hold of him and Mukesh caused injuries with a knife. Sagar and Ankit gave blows with handles of spade on the back and



legs of Satbir. Even, Rajesh was keeping a vigil near the place of occurrence. Thus, all the accused had actively participated and the impugned order is based on correct appreciation of evidence in the present case.

8. Before proceeding further in the matter, it would be apposite to refer to the provisions of Section 319 Cr.P.C.

Section 319 Cr.P.C, reads 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 a fresh, 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.”

9. The Hon'ble Supreme Court in the case of **Hardeep Singh Versus State of Punjab & others, 2014(1) R.C.R. (Criminal) 623**, held as under:-

“5. On the consideration of the submissions raised and in view of what has been noted above, the following questions are to be answered by this Bench :

(i) What is the stage at which power under Section 319



Cr.P.C. can be exercised?

(ii) Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

(iii) Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

(iv) What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319(1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood convicted?

(v) Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charged or who have been discharged?

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Question Nos.I & III

Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom



materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. ? Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No. II

Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV

Q.IV What is the nature of the satisfaction required to invoke



the power under Section 319 Cr.P.C. to arraign an accused?
Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No. V.

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh.

In *Sartaj Singh Versus State of Haryana & another, 2021(2)*

R.C.R. (Criminal) 527, it held as under:-



“6.2 Considering the law laid down by this Court in Hardeep Singh (supra) and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under section 319 CrPC, 1973 even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under section 319 CrPC, 1973 provided from the evidence (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial.

6.3 In S. Mohammed Ispahani v. Yogendra Chandak (2017) 16 SCC 226, this Court has observed and held as under: (SCC p. 243)

"35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge-sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet. Once that stage has gone, the Court is still not powerless by virtue of



section 319 CrPC, 1973. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused."

6.4 In the case of Rajesh v. State of Haryana (2019) 6 SCC 368, after considering the observations made by this Court in Hardeep Singh (supra) referred to hereinabove, this Court has further observed and held that even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of section 319 CrPC, 1973 and even those persons named in FIR but not implicated in chargesheet can be summoned to face the trial provided during the trial some evidence surfaces against the proposed accused.

7. Applying the law laid down by this Court in the aforesaid decisions to the case of the accused on hand, we are of the opinion learned Trial Court was justified in summoning the private respondents herein to face the trial as accused on the basis of the deposition of the appellant - injured eye witness. As held by this Court in the aforesaid decisions, the accused can be summoned on the basis of even examination-in-chief of the witness and the Court need not wait till his cross-examination. If on the basis of the examination-in-chief of the witness the Court is satisfied that there is a prima facie case against the proposed accused, the Court may in exercise of powers under section 319 CrPC, 1973 array such a person as accused and summon him to face the trial. At this stage, it is required to be noted that right from the beginning the appellant herein - injured eye witness, who was the first informant, disclosed the names of private respondents herein and specifically named them in the FIR.



But on the basis of some enquiry by the DSP they were not charge-sheeted. What will be the evidentiary value of the enquiry report submitted by the DSP is another question. It is not that the investigating officer did not find the case against the private respondents herein and therefore they were not chargesheeted. In any case, in the examination-in-chief of the appellant-injured eye witness, the names of the private respondents herein are disclosed. It might be that whatever is stated in the examination-in-chief is the same which was stated in the FIR. The same is bound to be there and ultimately the appellant herein - injured eye witness is the first informant and he is bound to again state what was stated in the FIR, otherwise he would be accused of contradictions in the FIR and the statement before the Court. Therefore, as such, the learned Trial Court was justified in directing to issue summons against the private respondents herein to face the trial.

8. Now, so far as the impugned judgment and order passed by the High Court is concerned, it appears that while quashing and setting aside the order passed by the learned Trial Court, the High Court has considered/observed as under:

"No evidence except the statement of Sartaj Singh, which has already been investigated into by the concerned DSPs was relied upon by the trial Court to summon, which was not sufficient for exercising power under Section 319 Cr.P.C., 1973.

As per statement of Sartaj Singh, Palwinder Singh and Satkar Singh gave him lathi blows on the head. Manjeet Singh, Amarjeet Singh, Rajwant Singh, Narvair Singh and Sukhdev Singh were holding gandas. Manjeet Singh, Amarjeet Singha and Rajwant Singh gave him gandas blows on the head and face.



All the injuries are stated to fall in the offence under Sections 323, 324, 326, 341 read with Section 149 IPC. In case, so many people as mentioned above were giving gandas and lathies blows on the head, Sartaj Singh was bound to have suffered more injuries, which would not have left him alive and probably he would have been killed on the spot. He seems to have escaped with only such injuries as have invited offence only under Sections 323, 324, 326, 341 read with Section 149 of IPC. Therefore, the trial Court erred in exercising his jurisdiction summoning the other accused where exaggeration and implication is evident on both sides."

8.1 The aforesaid reasons assigned by the High Court are unsustainable in law and on facts. At this stage, the High Court was not required to appreciate the deposition of the injured eye witness and what was required to be considered at this stage was whether there is any prima facie case and not whether on the basis of such material the proposed accused is likely to be convicted or not and/or whatever is stated by the injured eye witness in his examination-in-chief is exaggeration or not. The aforesaid aspects are required to be considered during the trial and while appreciating the entire evidence on record. Therefore, the High Court has materially erred in quashing and setting aside the order passed by the learned Trial Court summoning the accused to face the trial in exercise of powers under section 319 CrPC, 1973 on the reasoning mentioned hereinabove. Even the observations made by the High Court referred to hereinabove are on probability. Therefore, the impugned judgment and order passed by the High Court is not sustainable in law and on facts and is beyond the scope and ambit of section 319 CrPC, 1973.



8.2 In view of the above and for the reasons stated that, the present appeals succeed. The impugned judgment and order passed by the High Court dated 28.08.2020 in revision application bearing CRR No. 3238 of 2018 and CRMM No. 55631 of 2018 is hereby quashed and set aside and the order passed by the learned Trial Court summoning the private respondents herein to face the trial is hereby restored. The private respondents herein now to face the trial as summoned by the learned Trial Court. The present appeals are allowed accordingly.

(emphasis supplied)

In Manjeet Singh Versus State of Haryana & others, 2021 SCC

OnLine 632, it held as under:-

“34.The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under section 319 CrPC, 1973 can be summarized as under:

- (i) That while exercising the powers under section 319 CrPC, 1973 and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;
- (ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;
- (iii) the law has been properly codified and modified by the legislature under the CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;
- (iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;
- (v) 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;



(vi) section 319 CrPC, 1973 allows the court to proceed against any person who is not an accused in a case before it;
(vii) the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency;

(viii) section 319 CrPC, 1973 is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;

(ix) the power under section 319(1) CrPC, 1973 can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207 / 208 CrPC, committal, etc. which is only a pretrial stage intended to put the process into motion;

(x) the court can exercise the power under section 319 CrPC, 1973 only after the trial proceeds and commences with the recording of the evidence;

(xi) the word "evidence" in section 319 CrPC, 1973 means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;

(xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under section 319 CrPC, 1973 is to be exercised and not on the basis of material collected during the investigation;

(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under section 319 CrPC, 1973 and can proceed against such other person(s);



(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under section 319 CrPC, 1973 can be exercised;

(xv) that power under section 319 CrPC, 1973 can be exercised even at the stage of completion of examination-in-chief and the court need not has to wait till the said evidence is tested on cross-examination;

(xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of section 319 CrPC, 1973 and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);

(xvii) while exercising the powers under section 319 CrPC, 1973 the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.

35. Applying the law laid down in the aforesaid decisions to the facts of the case on hand we are of the opinion that the Learned trial Court as well as the High Court have materially erred in dismissing the application under section 319 CrPC, and refusing to summon the private respondents herein to face the trial in exercising the powers under section 319 CrPC. It is required to be noted that in the FIR No.477 all the private respondents herein who are sought to be arraigned as additional accused were specifically named with specific role attributed to them. It is specifically mentioned that while they were returning back, Mahendra XUV bearing no. HR-40A-4352



was standing on the road which belongs to Sartaj Singh and Sukhpal. Tejpal, Parab Sharan Singh, Preet Samrat and Sartaj were standing. Parab Sharan was having lathi in his hand, Tejpal was having a gandsi, Sukhpal was having a danda, Sartaj was having a revolver and Preet Singh was sitting in the jeep. It is specifically mentioned in the FIR that all the aforesaid persons with common intention parked the Mahendra XUV HR-40A-4352 in a manner which blocks the entire road and they were armed with the weapons. Despite the above specific allegations, when the charge-sheet/final report came to be filed only two persons came to be charge-sheeted and the private respondents herein though named in the FIR were put/kept in column no.2. It is the case on behalf of the private respondents herein that four different DSPs inquired into the matter and thereafter when no evidence was found against them the private respondents herein were put in column no.2 and therefore the same is to be given much weightage rather than considering/believing the examination-in-chief of the appellant herein. Heavy reliance is placed on the case of Brijendra Singh (Supra). However none of DSPs and/or their reports, if any, are part of the charge-sheet. None of the DSPs are shown as witnesses. None of the DSPs are Investigating Officer. Even on considering the final report/charge-sheet as a whole there does not appear to be any consideration on the specific allegations qua the accused the private respondents herein who are kept in column no.2. Entire discussion in the charge-sheet/final report is against Sartaj Singh only.

36. So far as the private respondents are concerned only thing which is stated is "During the investigation of the present case, Shri Baljinder Singh, HPS, DSP Assandh and Shri Kushalpal, HPS, DSP Indri found accused Tejpal Singh, Sukhpal Singh, sons of Gurdev Singh, Parab Sharan Singh and Preet Samrat Singh sons of Mohan Sarup Singh caste Jat Sikh, residents of



Bandrala innocent and accordingly Sections 148, 149 and 341 of the IPC were deleted in the case and they were kept in column no.2, whereas challan against accused Sartaj has been presented in the Court." .

37. Now thereafter when in the examination-in-chief the appellant herein-victim-injured eye witness has specifically named the private respondents herein with specific role attributed to them, the Learned trial Court as well as the High Court ought to have summoned the private respondents herein to face the trial. At this stage it is required to be noted that so far as the appellant herein is concerned he is an injured eye-witness. As observed by this Court in the cases of State of MP v. Mansingh (2003) 10 SCC 414 (para 9); Abdul Sayeed v. State of MP (2010) 10 SCC 259; State of Uttar Pradesh v. Naresh (2011) 4 SCC 324, the evidence of an injured eye witness has greater evidential value and unless compelling reasons exist, their statements are not to be discarded lightly. As observed hereinabove while exercising the powers under section 319 CrPC the Court has not to wait till the cross-examination and on the basis of the examination-in-chief of a witness if a case is made out, a person can be summoned to face the trial under section 319 CrPC.

38. Now so far as the reasoning given by the High Court while dismissing the revision application and confirming the order passed by the Learned trial Court dismissing the application under section 319 CrPC is concerned, the High Court itself has observed that PW1 Manjeet Singh is the injured witness and therefore his presence cannot be doubted as he has received fire arm injuries along with the deceased. However, thereafter the High Court has observed that the statement of Manjeet Singh indicates over implication and that no injury has been attributed to either of the respondents except they were armed with weapons and the concerned injuries are attributed only to Sartaj Singh even for the sake of arguments someone was present with Sartaj



Singh it cannot be said that they had any common intention or there was meeting of mind or knew that Sartaj would be firing. The aforesaid reasonings are not sustainable at all. At the stage of exercising the powers under section 319 CrPC the Court is not required to appreciate and/or enter on the merits of the allegations of the case. The High Court has lost sight of the fact that the allegations against all the accused persons right from the very beginning were for the offences under Sections 302, 307, 341, 148 & 149 IPC. The High Court has failed to appreciate the fact that for attracting the offence under Section 149 IPC only forming part of unlawful assembly is sufficient and the individual role and/or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to either of the respondents except that they were armed with weapons and therefore, they cannot be added as accused is unsustainable. The Learned trial Court and the High Court have failed to exercise the jurisdiction and/or powers while exercising the powers under section 319 CrPC.

39. Now so far as the submission on behalf of the private respondents that though a common judgment and order was passed by the High Court in CRR No.3238 of 2018 at that stage the appellant herein did not prefer appeal against the impugned judgment and order passed by the High Court in CRR No.28 of 2018 and therefore this Court may not exercise the powers under Section Article 136 is concerned the aforesaid has no substance. Once it is found that the Learned trial Court as well as the High Court ought to have summoned the private respondents herein as additional accused, belated filing of the appeal or not filing the appeal at a relevant time when this Court considered the very judgment and order but in CRR No.3238 of 2018 cannot be a ground not to direct to summons the private respondents herein when this Court has found that a prima facie case is made out against the private respondents herein and they are to be



summoned to face the trial.

40. Now so far as the submission on behalf of the private respondents that though in the charge-sheet the private respondents herein were put in column no.2 at that stage the complainant side did not file any protest application is concerned, the same has been specifically dealt with by this Court in the case of Rajesh (Supra). This Court in the aforesaid decision has specifically observed that even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial Court to summon other persons as well as who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the court is still not powerless by virtue of section 319 CrPC, 1973.

41. Similarly, the submission on behalf of the private respondents herein that after the impugned judgment and order passed by the High Court there is a much progress in the trial and therefore at this stage power under section 319 CrPC, 1973 may not be exercised is concerned, the aforesaid has no substance and cannot be accepted. As per the settled preposition of law and as observed by this Court in the case of Hardeep Singh (Supra), the powers under section 319 CrPC, 1973 can be exercised at any stage before the final conclusion of the trial. Even otherwise it is required to be noted that at the time when the application under section 319 CrPC, 1973 was given only one witness was examined and examination-in-chief of PW1 was recorded and while the cross-examination of PW1 was going on, application under section 319 CrPC, 1973 was given which came to be rejected by the Learned trial Court. The Order passed by the Learned trial Court is held to be unsustainable. If the Learned trial Court would have summoned the private respondents herein at that stage such a situation would not have arisen. Be that as it may as observed herein powers under section 319 CrPC, 1973 can be exercised at any stage from commencing of the trial and



recording of evidence/deposition and before the conclusion of the trial at any stage.

42. In view of the above and for the reasons stated above the impugned judgment and order passed by the High Court and that of the Learned trial Court dismissing the application under section 319 CrPC submitted on behalf of the complainant to summon the private respondents herein as additional accused are unsustainable and deserve to be quashed and set aside and are accordingly quashed and set aside. Consequently the application submitted on behalf of the complainant to summon the private respondents herein is hereby allowed and the Learned trial Court is directed to summon the private respondents herein to face the trial arising out of FIR No.477 dated 27.07.2016 in Sessions Case No.362 of 2016 for the offences punishable under Sections 302, 307, 341, 148 & 149 IPC. However, it is specifically observed that the observations made hereinabove are only prima facie for the purpose of exercising the powers under section 319 CrPC and the Learned trial Court to decide and dispose of the trial in accordance with the law and on its own merits and on the basis of the evidence to be laid before it.”

(emphasis supplied)

In Sagar Versus State of U.P. & another etc. 2022(2) R.C.R.

(Criminal) 344, held as under:-

“9.The Constitution Bench has given a caution that power under Section 319 of the Code 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. The learned Single Judge of the



High Court has even failed to consider the basic principles laid down by this Court while invoking [Section 319](#) of the Code, which has been considered by the learned trial Judge under its order dated 30 th January, 2018.”

(emphasis supplied)

In *Sukhpal Singh Khaira Versus The State of Punjab, 2023(1)*

SCC 289, held as under:-

“32.We have also kept in view the point by point analysis of the object and power to be exercised under [Section 319](#) of CrPC, as has been indicated in para 34 of [Manjit Singh vs. State of Haryana and Others](#) (2021) SCC Online SC 632.”

(emphasis supplied)

10. A reading of the aforementioned judgments would show that firstly, the crucial test to be applied for the purposes of summoning of a prospective accused is that there must be more than a *prima facie* case as exercised at the time of framing of charge but short of satisfaction to an extent that the evidence, if it goes unrebutted would lead to conviction. This is on account of the fact that charges already stand framed against the accused facing Trial and therefore, the standard of proof for the purposes of summoning of an accused who had been initially exonerated ought to be slightly higher. However, clearly, there is no requirement that the evidence available on the file must be such that would reasonably lead to conviction.

Secondly, the Court while exercising powers under Section 319 Cr.P.C. is not required or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the course of Trial.

11. Applying the aforementioned principles to the present case, it can



be very well seen that in the present case, the fight had taken place while Mukesh Kumar, main accused and Satbir Singh, complainant were playing Volley Ball in the compound of Government Middle School, Rasulpur Khurd, District Karnal. Both were playing in opposite teams and there were hot exchanges over a trivial issue of earning a point between both the teams. The other team members got them separated and thereafter, a fight had taken place between both of them. In the present case, even Mukesh Kumar, main accused is also alleged to have suffered injuries at the hands of Satbir Singh. However, it is a different case that the version got recorded by Mukesh Kumar was later on found to be incorrect by the police. However, as per the complainant/respondent No.2, Mukesh Kumar was carrying a knife in his hand and Satbir had suffered the abovementioned injuries.

12. From a perusal of the aforementioned both injuries, it is apparent that Satbir had suffered only two injuries in the present case and both injuries were caused with a knife by Mukesh Kumar. The complainant in his testimony (Annexure PW-4) stated that all the accused were carrying *dandas* and *handles* of spade in their hands. Neeraj had caught hold of him, whereas, Sagar @ Bittoo, petitioner No.2 and Ankit, petitioner No. 4 gave blows with handles of spade on his back and on his legs. However, the injuries caused by the petitioners No.2 and 4 are clearly missing in the medical reports. In fact, as per PW-1, Satbir Singh, all the petitioners had come prepared and were duly armed to cause injuries to him, but the injuries, which were allegedly caused by them were not corroborated by medical evidence.

13. Apart from that, it is apparent from the record that repeated applications were moved by both the sides to the local police and the matter



was investigated by 03 different DSPs of Karnal police and the facts were finally verified by SP, Karnal at his own level. However, during all the investigations, it was found that all the petitioners had not participated in the present case and their presence at the place of occurrence could not be established. No doubt, the Court is obliged to look into the evidence only, at this stage, however, the conclusions recorded by the police and the supporting material collected during the course of investigation also cannot be overlooked by the Court, while deciding the application under Section 319 Cr. P.C, even though the evidence led by the prosecution is the main basis for disposal of the application. Still further, from the evidence led by the prosecution, it appears that the fight in the present case had taken place at the spur of the moment over a minor issue of counting the points in a Volley Ball game. Even otherwise, admittedly, there was no enmity between the parties and the petitioners had no reason to participate in the present occurrence. Still further, it is also apparent that Mukesh Kumar and Satbir Singh were members of opposite teams, while playing the Volley Ball and the occurrence had taken place at the spur of the moment and injuries were caused by both the sides. Apart from that, in the present case, this Court has no hesitation to hold that there was not sufficient material on record, which could serve as a ground for summoning the petitioners to face trial along with Mukesh Kumar, who had already been arrayed as an accused in the present case.

14. In view of the above referred judgments and the discussions, the present revision petition is allowed and the impugned order dated 13.09.2021, passed by the Court of Additional Sessions Judge, Karnal, whereby the petitioners were summoned as an additional accused under



Section 319 Cr.P.C is ordered to be set aside.

15. Pending application(s), if any,are also disposed off.

07.03.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No