

2024:PHHC:168021



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

CRR 2401 of 2019

Date of Decision: 23.09.2024

Rajbeer Singh and another

...Petitioners

Versus

State of Punjab

... Respondents

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

Present : Mr. Rishu Mahajan, Advocate
for the petitioners.

Mr. I.P.S. Sabharwal, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioners have filed the present revision petition against the impugned order dated 04.08.2018 passed by the Additional Sessions Judge, Jalandhar, whereby, the petitioners were summoned as additional accused under Section 319 Cr.P.C. to face trial alongwith other accused in the present case.

2. The FIR in the present case was registered on the basis of the statement made by Rohit son of late Shri Balwinder Kumar and the same has been reproduced below:-

*“Statement of Rohit son of Late Balwinder Kumar
resident of H. No.333, New Rajan Nagar Basti Peer
Daad Jalandhar age about 17 years Ph.*

No. 97802-70247. It is stated that I am a resident of the abovesaid address. I am staying at home by leaving my studies of 10+2 from Devi Sahai School, Basti Nau Jalandhar. On dated 16-10-2016 at time about 8:00 at night I was going to Karyana shop to buy pulse ("DAAL") and when I reached "GANDA NAALA" Basti Peer Daad then one white coloured car came from behind, which was driven by Sunil Kumar alias Sonu, Gurpreet Singh alias Gopi resident of village Nahla, Distt. Jalandhar was sitting besides him. With him at the rear seat two other young men were sitting. As the car stopped, Gopi caught me from hand and forcibly threw me into the car. As soon as I sat in the car they tied my mouth with cloth and sniffed in me something and I fell unconscious and they wandered in the car by taking me. My eyes were covered, as I came to my conscious. One of these four administered me an intoxicated injection and Sonu said to Gopi to do shameful act with him. Then Sonu caught hold of my arms and Gopi alias Gurpreet did unnatural sexual intercourse with me. Then I felt a lot of pain and I fell unconscious due to unbearable pain. After that when I came back to my conscious then at about 7 a.m. in the morning dated 17-10-2016, I fell in the bushes at Leather Complex and I was returning to my conscious. The boys Shiva resident of Basti Peer Daad and Soma resident of Basti Peer Daad, taking tuitions with me, took me to my house and my Uncle Johny got me admitted in the Civil Hospital Jalandhar for treatment, where I am under treatment. Sd/- (English) Rohit Attested Sd Brahm Lal ASI PS BBK Jalandhar dated 17-10-2016”

3. At the time of issuance of notice of motion, on 19.09.2019, this Court had noted the following contentions raised by learned counsel for the petitioners:-

“Learned counsel for the petitioners contends that the version of the complainant as narrated in the FIR is materially at variance, to his deposition before the Court. It is contended that admittedly, the complainant had named two persons namely Gurpreet Singh @ Gopi and Sunil Kumar @ Sonu in the FIR, who committed the alleged commission of offence. According to him, the complainant had admittedly turned unconscious and did not reveal anything about the occurrence except the pain when he was admitted in the hospital. According to him, after investigation the challan was filed against the abovesaid two accused and the petitioners were not even associated in the investigation. He submits that summoning of petitioners as additional accused on the deposition of victim in Court, alone may not be sufficient to exercise power under Section 319 Cr.P.C”.

4. While arguing the present petition, learned counsel for the petitioners has reiterated the above referred submissions. Learned counsel submits that two accused, namely, Anil Kumar @ Sunil Kumar @ Sonu and Gurpreet Singh @ Gopi were tried by the Court of Additional Sessions Judge, Jalandhar and vide judgment dated 26.04.2022 (Annexure P-5), both the principal accused have been ordered to be acquitted by the trial Court. Thus, no purpose will be served by prosecuting the petitioners, who were nowhere there in the

initial version nor their involvement surfaced during the course of investigation.

5. On the other hand, learned appearing on behalf of the State of Punjab has vehemently opposed the submissions made by learned counsel for the petitioners and submitted that the petitioners were involved in a serious crime and may be summoned by this Court.

6. I have heard learned counsel for the parties and perused the record.

7. Powers of the Court to proceed under Section 319 Cr.P.C. even against those persons who are not arraigned as accused, cannot be disputed. This provision is meant to achieve the objective that real culprit should not get away unpunished. A Constitution Bench of this Court in ***Hardeep Singh v. State of Punjab & Ors., 2014(1) RCR (Criminal) 623 : 2014(1) Recent Apex Judgments (R.A.J.) 384 : (2014) 3 SCC 92***, explained the aforesaid purpose behind this provision in the following manner:

“8.The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of

the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under Cr.P.C indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished.

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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. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 Cr.P.C.?

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19. 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. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence”.

8. It also goes without saying that Section 319 Cr.P.C., which is an enabling provision empowering the Court to take appropriate steps for proceeding against any person, not being an accused, can be exercised at any time after the charge-sheet is filed and before the pronouncement of the judgment, except during the stage of Section 207/208 Cr.P.C., the committal etc., which is only a pre-trial stage intended to put the process into motion.

9. In **Hardeep Singh's** case (supra), the Constitution Bench has also settled the controversy on the issue as to whether the word 'evidence' used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and indicates the evidence collected during investigation or the word 'evidence' is limited to the evidence recorded during trial. It is held that it is that material, after cognizance is taken by the Court, that is available to it while making an inquiry into or trying an offence, which the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court. The word 'evidence' has

to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. It means that the power to proceed against any person after summoning him can be exercised on the basis of any such material as brought forth before it. At the same time, this Court cautioned that the duty and obligation of the Court becomes more onerous to invoke such powers consciously on such material after evidence has been led during trial. The Court also clarified that 'evidence' under Section 319 Cr.P.C. could even be examination-in-chief and the Court is not required to wait till such evidence is tested on cross-examination, as it is the satisfaction of the Court which can be gathered from the reasons recorded by the Court in respect of complicity of some other person(s) not facing trial in the offence.

10. The moot question, however, is the degree of satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and the related question is as to in what situations this power should be exercised in respect of a person named in the FIR but not charge-sheeted. These two aspects were also specifically dealt with by the Constitution Bench in **Hardeep Singh's case** (supra) and answered in the following manner:

*"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 Cr.P.C., 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***

[2013(4) RCR (Criminal) 948 : 2013(6) Recent Apex Judgments (R.A.J.) 356 : (2014) 3 SCC 321], 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.

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105. Power under Section 319 Cr.P.C. 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 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused.

(emphasis supplied)"

11. In order to answer the question, some of the principles enunciated in Hardeep Singh's case (supra) may be recapitulated:

“Power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some 'evidence' against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of

satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity”.

12. Applying the said principles of law to the facts of the present case, it stands established that initially the complainant had levelled allegations against Anil Kumar @ Sunil Kumar @ Sonu and Gurpreet Singh @ Gopi. It requires mention that the petitioners were not named as accused in the present case. Even, while presenting the challan (Annexure P-2), the police specifically stated that regarding two unidentified persons, neither the complainant had any clue nor the accused had divulged any details regarding them. Still further, it was also found that there was old animosity between both the sides. Both the accused, who were initially named in the FIR have already been acquitted in the present case. Thus, it is apparent that after several months, both the petitioners have been named by PW1 Rohit in his deposition. Even, PW1 Rohit has not mentioned as to on what basis the petitioners have been named in the present case. However, the trial Court blissfully overlooked the said material aspect of the matter and wrongly ordered the summoning of the petitioners.

13. In view of the above, the present petition is allowed and the impugned order dated 04.08.2018 passed by the Additional Sessions Judge, Jalandhar, is ordered to be set aside.

14. All the pending applications, if any, are also disposed off.

23.09.2024

(N.S.SHEKHAWAT)

amit rana

JUDGE

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