

2024:PHHC:162765



201

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2458-2022
DECIDED ON: 06.08.2024

SUMIL @ CHHOTTE

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Amandeep Hooda, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG Haryana

SANDEEP MOUDGIL, J (ORAL)

1. Jurisdiction of this court has been invoked under section 401 Cr.P.C. for quashing of order dated 17.09.2022 passed by Additional Sessions Judge, Jhajjar, whereby the application u/s 319 Cr.P.C was wrongly allowed in the case arising out of FIR No.787 dated 07.09.2017 registered at Police Station Jhajjar, District Jhajjar, under Section 323, 324, 302 of the Indian Penal Code (for short – ‘IPC’).
2. Factual matrix of the case unfolds that the respondent namely Paramjeet submitted that he had appeared as prosecution witness PW-10 and stated on oath that the accused namely sumit @ chhotte s/o Sahab Singh were responsible for the commission of the offence alleged. The name of the accused was written in

the complaint but he was not arrayed as an accused in the present case wherein he had actively participated in the commission of the offence.

3. The counsel for the petitioner contends that he has been falsely implicated in the present case which is apparent from the fact that as per the FIR/Complaint , co-accused Dishant had given iron pipe blow on the head of the complainant's brother with the intention to kill and the petitioner had hit complainant's brother Navjeet with an intention to kill. However it is submitted that as per the statement of Doctor and MLR, only two injuries were found on the body of Navjeet and both the injuries were attributed to other co-accused.

4. He further contends that as per zimni No.7 of DSP, the petitioner was not found to be present on the spot at the time of occurrence. As such, the impugned order is liable to be set aside.

5. Per contra, learned State Counsel has submitted that the order passed by the learned trial Court is just and proper and no fault can be found with it because the name of the petitioner and his active participation in the occurrence was very much in the complainant version. Moreover, prosecution witnesses have also named the petitioner as accused in their depositions made before the learned trial Court. Therefore, the present petition is liable to be dismissed.

6. Heard learned counsel for the respective parties at length.

7. The present revision pertains to grievance of the petitioner against the impugned order dated 17.09.2022 passed by the trial court allowing the application under section 319 Cr.P.C wherein the petitioner was directed to be summoned as additional accused.

8. Before delving into the merits of the case, it would be apposite to discuss section 319 Cr.P.C which is reproduced herein below:-

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.

9. It is a settled proposition of law that the evidence before the trial court should be such that if it goes unrebutted, then it should result in the conviction of the person who is sought to be summoned. The degree of satisfaction that is required to exercise power under section 319 Cr.P.C. is much stricter, considering that it is discretionary and an extra-ordinary power which requires much stronger evidence than mere probability of complicity.

10. Further, while discussing the scope of section 319 Cr.P.C., the Apex Court in ***“Manjeet Singh Vs State of Haryana, Criminal Appeal no. 875 of 2021(LQ/SC/2021/2950)*** has held that :-

“6.1.1. In Hardeep Singh Vs State of Punjab & Others, (2014) 3 SCC 92, The Constitution Bench of the Hon’ble Supreme Court considered, in detail the scope and ambit of the powers of the Magistrate under Section 319 of the Cr.P.C. , the object and purpose of Section 319 of the Cr.P.C etc. It was observed in the said decision that the entire effort was not to allow the real perpetrator of an offence to get away unpunished. It was observed that this was also a part of fair trial and in order to achieve that very end that the legislature thought of incorporating the provisions of Section 319 of the Cr.P.C. That for the empowerment of the courts to ensure that the Criminal administration of justice worked properly , the law had been appropriately codified and modified by the Legislature under the Cr.P.C indicating as to how the Courts should proceed to ultimately , find out the truth so that the innocent did not get punished but at the same time, the guilty were brought to the book under the law. It was observed that it was the duty of the Court to find out the real truth and to ensure that the guilty did not go unpunished.”

11. Moreso, I am of the strong opinion that Section 319 Cr.P.C allows the court to proceed against any person who was not accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in column 2 of the charge sheet filed under section 173 Cr.P.C or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

12. Therefore, going by the settled proposition of law discussed herein above coupled with the facts of the instant case, where after perusal of the

deposition of PW-10 Paramjeet Singh(brother of Navjeet) it has come to the light that the petitioner came and started beating his brother Navjeet who was lying on the road. Meaning thereby, his presence on the spot of occurrence cannot be negated on the whole and is to be ascertained by the lower court which makes the order of the lower court correct and without any perversity.

13. Taking into consideration the above stated facts, I do not find considerable merit in the present petition and therefore, the same is dismissed sans merit and the order passed by Additional Session Judge , Jhajjar, dated 17.09.2022 is hereby upheld.

14. Accordingly ordered.

(SANDEEP MOUDGIL)
JUDGE

06.08.2024

Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>