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

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**CRM-M-53678-2023
Reserved on : 03.11.2023
Pronounced on : 18.01.2024**

Dalbara Singh and others **..... Petitioners**
versus

State of Punjab and another **..... Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Akshay Chadha, Advocate
for the petitioners.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

PANKAJ JAIN, J.

1. Present petition is directed against order dated 26.09.2023 (P-13), passed by Additional Sessions Judge, Ludhiana whereby the petitioners have been summoned as additional accused to face trial in FIR No.102 dated 30.06.2017, registered for offences punishable under Sections 302, 323 and 506 of IPC, at Police Station Dehlon, District Ludhiana.

2. FIR was registered on the complaint made by Darshan Singh alleging as under:-

“Stated that I am residing at the aforesaid address with my family and I am an Ex-Serviceman. On 29-6-17, at about 6.30 PM, I and my wife Hardeep Kaur and my son Sukhdeep Singh were standing in the street outside our house. In the meanwhile, our neighbourer Raghbir Singh son of Lehna Singh, armed with *gandassa*, Dilbagh Singh son of Lehna Singh, armed with *danda* and Gogi Singh, sister's son of Dilbagh Singh, armed with

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danda and Gurmeet Kaur wife of Dilbagh Singh came and immediately on reaching, Gurmeet Kaur and Gogi Singh raised *lalkara* that let we be finished today and we should not go scot free. On this, Raghbir Singh alias Mappi inflicted direct blow with his *gandassa* on the head of my wife Hardeep Kaur, who has very less vision, with the intention to kill. She fell on the ground after becoming unconscious. Dilbagh Singh, Gogi Singh and Gurmeet Kaur inflicted kick blows upon my wife while she was lying on the ground. When I and my son Sukhdeep Singh tried to rescue my wife from them, Dilbagh Singh inflicted blows with *danda* which he was carrying, on my left arm and right arm and Gogi Singh inflicted *danda* blow on the left arm of my son Sukhdeep Singh, Gurmeet Kaur pulled hair of my head as well as of my son Sukhdeep Singh. In order to save us, we raised alarm *Mar Ditta, Mar Ditta*. On hearing this, all the aforesaid ran away from the spot alongwith their respective weapons by extending threats to our lives. The cause of enmity is this that few days back, an altercation took place between our children and that of Dilbagh Singh and a verbal compromise had been effected between us in the village only on *Panchayati* basis. For this reason, they have inflicted injuries upon us. Thereafter, after arranging a vehicle, I and my son Sukhdeep Singh got admitted my wife Hardeep Kaur in CMC Hospital, Ludhiana on 29-6-17 for treatment, where she is undergoing treatment. Thereafter, today morning, I got my injuries medically examined from Civil Hospital, Delhon. Now, I have met you at the main gate of CMC Hospital, Ludhiana, where I have got recorded my statement, the same has been heard and

is correct. Action be taken.”

3. Investigating Officer presented report under Section 173 Cr.P.C., whereby only Raghbir Singh who was challaned, as the petitioners by that time could not be arrested. Charges were framed against Raghbir Singh by the trial Court. The complainant moved an application under Section 319 Cr.P.C. for summoning of the petitioners as additional accused. Trial Court vide order dated 16.04.2018 held that since the persons against whom application has been moved for being summoned as additional accused have not been declared innocent as yet, trial be stayed to await the final report. It further held that application under Section 319 Cr.P.C. at that stage of trial was not maintainable.

4. Prosecution filed final report under Section 173(8) Cr.P.C. declaring Dilbagh Singh, Gurmeet Kaur and Gurmeet Singh @ Gogi i.e. present petitioners innocent. Trial Court issued notice to the petitioners. The order was impugned by the petitioners before this Court in CRM-M-28649-2019 which was allowed vide order dated 25.02.2020 holding as under:-

“xx xx xx

Having given thoughtful consideration to the rival contentions, this court finds instant petition merits acceptance for the reasons to follow.

On the date of passing of impugned order, there was no material with the trial court, showing complicity of petitioners in the alleged commission of crime. The petitioners could not have been summoned, in as much as, the police had filed final report under Section 173 (8) Cr.P.C. in favour of petitioners, declaring them innocent. The trial court

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before summoning the petitioners was required to adjudicate upon the application of prosecution under Section 319 Cr.P.C. taking into account the evidence collected by the Investigating officer, if any against the petitioners, which was deferred till the filing of final report against the petitioners.

In view of discussion made above, the instant petition is allowed. Resultantly, impugned order dated 20.05. 2019 is set aside.”

5. Complainant again moved an application under Section 319 Cr.P.C. against the present petitioners on 24.01.2022. However, the same was withdrawn on the statement made by Additional Public Prosecutor owing to technical defect. Order dated 26.07.2022 has been placed on record as Annexure P-10. Third application was again moved on 20.09.2022 which stands allowed vide impugned order.

6. While assailing the impugned order, counsel representing the petitioners has submitted that successive filing of applications under Section 319 Cr.P.C. without material change in facts and circumstances amounts to abuse of process of law. He submits that power under Section 319 of the Code to summon additional accused has to be exercised sparingly and not casually only in those circumstances wherein the evidence before the Court satisfies test of ‘*more than prima facie case*’. It has been further contended that the petitioners have been summoned on the bald statements of complainant PW-1 Darshan Singh and PW-2 Sukhdeep Singh, which were already available on record when the first summoning order against the petitioners was set aside by this Court vide order dated 25.02.2020. Counsel further refers to the post mortem report of the deceased to submit that death occurred due to severe head injury

and none of the petitioners, now ordered to be summoned as additional accused has been attributed the same.

7. Having heard contention raised by counsel for the petitioners, this Court does not find that there is any reason to interfere in the impugned order. It will be apposite to peruse Section 319 Cr.P.C.:-

“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 subsection (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.”

8. From the perusal of the provision, it is evident that even if earlier application under Section 319 of the Code had been decided on merits and subsequent thereto further evidence had come against the present petitioners, trial Court would have been well within its right to summon them as additional accused. So far as the arguments raised by counsel with respect to successive applications moved under Section 319

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Cr.P.C. and dismissal of earlier applications is concerned, the same does not cut any ice. Admittedly, the earlier applications filed under Section 319 Cr.P.C. with the same prayer were decided on merits.

9. Coming on to the change of circumstance, after the applications under Section 319 moved earlier were withdrawn, PW-4 Dr. Gurjinder Kaur and PW-5 Dr. Amit Arora have been examined. Their testimonies reads as under:-

“PW4: Dr. Gurjinder Kaur, MO, ESI Mandi Gobindgar, Faregarh Sahib.

On S.A.

On 30.06.2017 I was posted as Medical Officer at CHC Dehlon, Ludhiana. On that day at about 10:30 am I conducted medical examination of Darshan Singh, S/o Bhagat Singh, aged about 65 years R/o Sayan Kalan, P.S. Delhon, Ludhiana. Patient was accompanied by his son-in-law Baljinder Singh S/o Gurmail Singh. There was old scar mark over left knee joint.

Patient was calm, conscious, well oriented. BP 134/70, PR 76 min. I have prepared medico-legal report number GK/24/2017 dated 30.06.2017 and made following observation.

Patient gave alleged history of assault at 6:00 pm at Sayan Kalan at home. On examination following injuries were found. Injuries:-

1. An abrasion reddish in colour about 2.5 cm x 1 cm over posterior aspect of left forearm about 7 Cm below left elbow joint.
2. Complaint of pain right forearm including wrist. No visible injury seen. Swelling, tenderness, Adv. X-ray.

Injury no. 1 was declared as simple and injury no. 2 was kept under observation. Weapon used for injury no. 1 was blunt and weapon used for inflicting injury no. 2 could not be ascertained. The probable duration of injury no. 1 was within 24 hours and duration of injury no. 2 could not be ascertained.

Today I have brought the original MLR register.

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Computerized copy of MLR is Ex.P10. Same is correct as per the original brought by me in the court today.

“PW5: Statement of Dr. Amit Aora, Mini PHC, Ghawaddi, District Ludhiana (after disposal of application U/s 311 Cr.P.C.

On S.A.

On 03.07.20217 I was posted as Medical Officer, Civil Hospital Dehlon. On the said date application Ex. P11 was moved by ASI Karamjit Singh to the then SMO, Civil Hospital, Dehlon for conducting postmortem of Hardeep Kaur W/o Darshan Singh, R/o Village Sayan Kalen Ludhiana pertaining to FIR. No. 102 dated 30.06.2017, P.S. Dehlon then SMO, Smt. Santosh Kaur deputed myself and Dr. Jaaneev Sandhu to conduct the postmortem. Her endorsement is Ex. P12.

On the said date postmortem of Handeep Kaur W/o Darshan Singh, R/o Village Sayan Kalan, Ludhiana was conducted by me and Dr. Jasneev Sandhu at 11:30 am and postmortem report bearing no. AA/02/17/CHC Dehlon dated 03.07.2017 was prepared. Dead body was brought by ASI Karamjit Singh, No. 645 PS. Dehlon. Dead body was identified by Darshan Singh S/o Bhagat Singh, R/o VPO Sayan Kalan, PS. Dehlon, Ludhiana and by Mr. Sukhdeep Singh S/o Darshan Singh, R/o VPO Sayan Kalan, P.S. Dehlon, Ludhiana. As per information provided by police cause of death was severe head injury.

General Description:-

Body wrapped in white cloth

Length	5 feet
Physique	Well built
Rogor Mortis	absent
Post Mortem staining	Present
Any other	NIL
External General Appearance	
Ligature Mark	No
State of eyes	
Pupil(Rt)	Dilated
Pupil(Lt)	Dilated
Cornea/Conjunctiva(Rt)	NAD
Cornea/Conjunctiva(Lt)	NAD

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Handed over to Police:- ASI Karamjit Singh, No. 645/ P.S. Dehlon.

- Dead body after post-mortem examination
- with its belongings
- Post mortem examination report
- Police inquest papers numbering 1 to 102

Time duration between death and postmortem examination was within 24-36 hours. Probable time between injury and death approximately 57 hours.

I have brought the original record. Same is correct as per original record produced by me. Computerized copy of the same is Ex.P13. Carbon copy of MLR is Ex. P14. Both the documents bears my signatures as well as the signatures of Dr. Jasneev Sandhu. I identify her signatures as I have been working with her and I have seen her writing and signing and I am well conversant with the same. I also identify our signatures on inquest report.”

10. The documentary evidence that has been proved by the testimony of PW-4 and P-5 i.e. MLR of the injured persons when read in the light of statements made by injured witnesses, it is evident that the version given by the complainant in the FIR now stands corroborated. Now, the test as per the law laid down by Constitution Bench in ***Hardeep Singh vs. State of Punjab, reported as 2014(3) SCC 92*** is more than *prima facie* i.e. the Court had to apply its mind to consider:

- (i) whether the evidence that has come on record during the course of trial if goes unrebutted can lead to the conviction of the petitioners.

11. The joint reading of FIR as well as the evidence on record recorded during the trial, in the considered opinion of this Court does satisfy the aforesaid test.

12. As a result of discussion held hereinabove, this Court does not find any reason to interfere in the impugned order. Resultantly, the

present petition is dismissed.

(PANKAJ JAIN)
JUDGE

18.01.2024
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No