

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3391-2019 (O&M)
Date of Decision: 26.02.2024

Dinesh Kumar & Anr.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Ms.Vaishali Kamboj, Advocate for the petitioners

Mr. GS Chinna, AAG Haryana

Sandeep Moudgil, J.

(1). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the order dated 20.11.2019 passed by Addl. Sessions Judge, Yamuna Nagar at Jagadhari vide which the application of the prosecution/petitioner under Section 319 CrPC for summoning (i) Amar Nath; (2) Raj Kumar Rana; and (3) Ravinder Sharma as additional accused was dismissed.

(2). Upon the complaint of Dinesh Kumar, an FIR No. 84 dated 14.5.2017 under Sections 365, 323, 325, 307, 201, 120-B IPC, Police Station Radaur was registered wherein it was alleged that on 14.5.2017, Mukesh brother of complainant-Dinesh Kumar and one Rajinder were going towards Radaur from wine shop in village Bakana and they were kidnapped by some persons specifically naming the above-named persons.

(3). Learned counsel for the petitioner submits that in the statements of Mukesh and Rajinder, on 19.05.2017 read with the statement dated 29.01.2019 (Annexure P5), they have specifically named Shiv Kumar Rana, Sanjiv Rana, Rajbir Rana, Satish, Ravinder Sharma Radauri, Raj Kumar Rana,

Photographer Radaur, Ashok @ Shoki. However, the police in their supplementary challan, have declared the accused persons as innocent despite the specific roles attributed to each one of the accused persons.

(4). It is argued that the summoning court erred in observing that as per zimni No.76 dated 23.01.2018 of the police file that on the intervening night of 13/14.05.2017, Ravinder Sharma was at Ambala with his brother and Raj Kumar Rana was at his residence at Radaur and Amar Nath was not in the territorial jurisdiction of the police Station Chappar and no documentary proof has been placed on record before the court below to ascertain these assertions. It is submitted that the police has colluded with accused persons and despite specific allegations has not arrayed them.

(5). He vehemently argued that as per the CCTV footage, Raj Kumar Rana and Ravinder Sharma were seen specifically and as such the role attributed to Amar Nath s/o Ratan Singh is that he stated that he would kill the injured and throw them in UP and after this he took gandasi from Shiv Kumar and inflicted injury on the left leg of Mukesh Kumar and therefore, since specific allegations are being leveled by the injured/victim, the trial court, illegally and wrongly, without ascertaining the authenticity of the evidence and letting the parties to lead evidence in regard or contravention thereto, straightaway rejected the application of the petitioner to summon the accused persons which is against the basic legal and criminal jurisprudence.

(6). Learned State counsel on the other hand submits that Amar Nath, Ravinder and Raj Kumar and other accused namely, Dalvinder, Vijay Kumar were found innocent because as per CCTV footage, the said persons were not present at the time of quarrel. Respondent No.2, namely, Amar Nath was in the

area of police station Chappar in the intervening night of 13/14-05-2017, Ravinder was present in the house of Dr. Uma Dutt Sharma at Ambala City, in the intervening night of 13/14-05-2017. Raj Kumar was present at his house. The other persons namely, Dalvinder and Vijay Kumar were also not present at the spot of occurrence and as such, they were not challaned.

(7). Heard learned counsel for the parties and gone through the record.

(8). The trial court has placed reliance on the zimni No. 76 dated 23.1.2018 of police file whereby it has been specifically mentioned that after inquiry from the respectable persons of the vicinity to which the aforesaid persons belong. It has been specifically observed that as per the report under section 173 Cr.P.C. it is reflected that during investigation, the said accused persons were found innocent and accordingly, they were not arrayed as accused. It was mentioned in zimni No.16 that on the intervening night of 13/14.5.2017, at the relevant date of occurrence, Ravinder Sharma son of Kishori Lal Sharma was at Ambala with his brother Dr. Uma Dutt Sharma, which was affirmed by Dr. Uma Dutt Sharma himself. Similarly, Raj Kumar Rana son of Om Parkash was at his residence in Radaur while Amar Nath son of Rattan Singh was in the territorial jurisdiction of Police Station Chhappar, far away from the place of occurrence and thereafter, he went to his village Narchron. The aforesaid fact qua Amar Nath was affirmed by Main Pal son of Hukam Singh resident of village Nachron and Devender Singh son of Phool Singh, resident of village Narchron.

(9). Further, it was also mentioned in para no. 15 of zimni no. 76 that even in the CCTV footage, which is part of the challan, there is no clip regarding presence of the aforesaid persons on the relevant date and time of

occurrence. The trial court has thus rightly observed that the aforesaid persons were not involved in the occurrence and thus, no case for issuance of process against them for summoning them as additional accused is made out. Moreover, no new fact or circumstance erupted after conclusion of investigation reflecting involvement of aforesaid persons in alleged occurrence.

(10). The power under Section 319 CrPC is discretionary power of the trial court, therefore, the discretion exercised by the trial court cannot be lightly interfered with, unless it is shown that the order refusing to implead the person as accused has been made in a mechanical manner and suffers from perversity. The trial court, while refusing to take cognizance against the accused, is bound to take into account the entire material placed before it and more particularly the chances of conviction of the accused proposed to be summoned.

(11). The issue relating to the power to be exercised under Section 319 of CrPC came up for consideration before a Constitutional Bench of the Supreme Court in **Hardeep Singh vs. State of Punjab (2014) 3 SCC 92** wherein the scope, procedure and at what stage, such power can be exercised was considered in detail. It was held that Section 319 CrPC 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 CrPC. It further held that 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 CrPC? The Constitutional Bench, while concurring with the views taken in **Dharam Pal Vs. State of Haryana reported in (2014) 3 SCC 306**, held that:-

“A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under [Section 319](#) Code of Criminal Procedure 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](#) Code of Criminal Procedure has to be complied with before he can be summoned afresh.”

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“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](#) Code of Criminal Procedure In [Section 319](#) Code of Criminal Procedure 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](#) Code of Criminal Procedure to form any opinion as to the guilt of the accused.”

(emphasis applied)

(12). In **Babubhai Bhimabhai Bokhiria & Another Vs. State of Gujarat & Others., AIR 2014 SC 2228**, the Supreme Court held that a person can be summoned under Section 319 CrPC as an additional accused only where strong and cogent evidence occurs against him, from the evidence led before the court, and when no specific role is attributed to the proposed accused, then he cannot be summoned under section 319 CrPC. Moreover, when the allegations against the person are general in character, he cannot be summoned under Section 319 CrPC to face trial.

(13). In view of the above discussion and keeping in view the judgment of the Hon'ble Supreme Court in **Hardeep Singh's** case (supra) and **Babubhai Bhimabhai Bokhiria & Another's** case (supra), this Court is of the considered view that there is no infirmity, perversity and illegality for any interference with the order dated 20.11.2019 passed by the trial court.

(14). Accordingly, the present petition is dismissed with no order as to costs.

26.02.2024
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No