



2024:DHC:9472



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 09.12.2024

+ **CRL.M.C. 3431/2019 & CRL.M.A. 31310/2019**

KARNAIL SINGH CHEEMAPetitioner

versus

STATE & ANR.Respondents

+ **CRL.M.C. 3509/2019**

SARABJEET SINGHPetitioner

versus

STATE & ANR.Respondents

Advocates who appeared in this case:

For the Petitioner(s) : Mr. Ajay Verma, Mr. Vaishnav Kirti Singh, Ms. Katyayini & Mr. Krishna Sharma, Advocates.

For the Respondents : Mr. Sunil Kumar Gautam, APP for the State with Mr. Praveen Kumar, Mr. Bhuman Bansal, Mr. Yashvinder Malik, Mr. Vincent Lakra, Mr. Ajay, Mr. Vikas Tyagi & Ms. Meenakshi Tyagi, Advocates.
Mr. Sumeet Verma, Advocate for R-2 (Amicus Curiae) (Through V.C.).
SI Anil Kumar (P.S. Crime Branch).

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CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petitions are filed challenging the order dated 13.05.2019 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), Rohini Courts, Delhi in CR No. 57326/2016 titled *State v. Sikander & Ors.*

2. By the impugned order, the learned ASJ ordered the petitioners to be summoned as accused persons under Section 319 of the Code of Criminal Procedure, 1973 ('**CrPC**') in FIR No. 273/1989 for offences under Sections 120B/147/148/149/323/325/427/447/506 of the Indian Penal Code, 1860 ('**IPC**') for which the other accused persons namely Sikander Singh, Lakhpat Rai and V.K. Ghai had been charged.

3. The FIR in the present case was registered on a complaint given by Ashok Sehgal. It is alleged that on 19.08.1989, the petitioner K.S. Cheema, along with accused persons - Lakhpat Rai, V.K. Ghai and Sikander Singh and some other persons entered in the factory of the complainant in which the complainant along with his friend one Pradeep Arora were sleeping. It is alleged that thereafter the accused persons not only gave beatings to the complainant and his friend but also abducted them in their car, and confined them in Room Nos. 302 and 300 of some hotel.



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4. It is alleged that thereafter, on the night of 20.08.1989, all the accused persons took the complainant and his friend to some farm house and kept them there till the evening of 21.08.1989. Subsequently, it is alleged that the accused persons released the complainant and his friend, after threatening them of dire consequences should they decide to make any complaint to the police or get themselves medically examined.

5. It is alleged that in the meanwhile, the associates of the accused persons also caused damage to the factory of the complainant. It is alleged that the associates of the accused persons cut the iron pole of the factory by gas cutter machine, demolished the sheds, and also took away two electricity meters, drill machines, grinding machines, two welding machines, one compressor, and other articles. It is further alleged that the accused persons took forcible possession of Plot No. A-4 to A-6.

6. A suit seeking permanent injunction in respect of the disputed property was filed by the complainant. The said suit was dismissed *vide* order dated 19.02.1990 on the ground of compromise between the parties. In terms of the settlement, the possession of the disputed premises had been handed over by the complainant to the other accused persons being – Sikander Singh, Vinod Kumar, Hardev Singh, Iqbal Singh. A duly sworn affidavit dated 08.03.1990 by the complainant was also placed on record. As per paragraph 3 of the affidavit, the names of the petitioners were wrongly mentioned. It further materialised that the petitioners were not involved in the criminal case.

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7. The learned Metropolitan Magistrate ('MM') *vide* order dated 28.08.1993 discharged the petitioners. In respect of the petitioner – Sarabjeet Singh, the learned MM noted that there existed no evidence to implicate Sarabjeet Singh.

8. In respect of the petitioner – K S Cheema, it was argued that the petitioner, then DSP in CRPF, was posted at Central Basket Ball Team, CRPF and that in the period between 15.05.1989 to 25.08.1989, the petitioner K S Cheema had not availed any kind of leave. A certificate to that effect duly signed by the Assistant Director had also been placed on record. Further, reliance was also placed on a duly attested affidavit dated 08.03.1990 by the complainant stating that the petitioners were not involved in the case and their names were wrongly mentioned. In the light of the same, the petitioner K S Cheema was also discharged.

9. Subsequently, the other accused persons namely Vinod Ghai, and Sikander Singh challenged the order dated 28.08.1993 passed by the learned MM whereby the petitioners were discharged thereby contending that they too were similarly placed as the petitioners in the present case, and should also have been discharged. The learned ASJ, while dismissing the revision petitions preferred by accused Vinod Ghai, and Sikander Singh, *vide* order dated 01.05.1997, noted that the other accused persons were not similarly placed as the petitioners. It was noted further that the prosecution had failed to challenge the order dated 28.08.1993 whereby the petitioners were discharged, and the

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same had attained finality.

10. Subsequently, an application was moved by the complainant under Section 340 of the CrPC for prosecuting the petitioners who were discharged. It was the case of the complainant that the lines at the end of paragraph 3 of the affidavit dated 08.03.1990 stating that the petitioners were not involved in the criminal case, and that their names were wrongly mentioned were fraudulently added.

11. The learned ACMM *vide* order dated 28.06.2010 dismissed the application filed by the complainant under Section 340 of the CrPC for prosecuting the petitioners. It was noted that no grounds for proceeding against the petitioners were made out. It was further noted that there existed no sufficient material on record to re-frame the charge or proceed against the petitioners. It was noted that the order of the learned MM discharging the petitioners was challenged neither by the complainant nor by the prosecution. It was noted that the civil suit between the parties was compromised after the filing of the present criminal case and that the complainant had received substantial amount for compromising the civil suit.

12. It was noted that admittedly as per the complainant, he executed the affidavit without any pressure, coercion, or fear when the compromise was effected. It was noted that it was the case of the complainant that the lines relating to the names of the petitioners being wrongly mentioned was subsequently added. It



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before the Court to infer that the lines were subsequently added. In that light, the learned ACMM dismissed the application under Section 340 of the CrPC filed by the complainant while specifically noting that there existed no sufficient material to reframe charge or proceed against the petitioners. A challenge to the order dated 28.06.2010 passed by the learned ACMM dismissing the application under Section 340 of the CrPC was subsequently also dismissed by the learned ASJ *vide* order dated 11.08.2010.

13. Subsequently, an application under Section 319 of the CrPC was filed by the State seeking summoning of the petitioners as accused persons in the present case. The learned CMM *vide* order dated 20.04.2015 dismissed the application under Section 319 of the CrPC while specifically noting that the petitioners sought to be summoned have already been discharged. It was noted that the power under Section 319 of the CrPC could be exercised to summon an accused formerly discharged, however, the same could be done only after taking recourse to Section 398 of the CrPC. The learned CMM, consequently, observed that the persons discharged can be summoned under Section 319 of the CrPC only upon an inquiry after the invocation of Section 398 of the CrPC by the aggrieved person. Consequently, the application under Section 319 of the CrPC was dismissed.

14. The learned ASJ, by impugned order, directed the summoning of the petitioners as accused in exercise of the power

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under Section 319 of the CrPC. The learned ASJ noted that the complainant had specifically named the petitioners, and also clarified their roles with regard to the commission of the offences. It was noted that there were more than compelling reasons that the petitioners be summoned despite the order of discharge dated 28.08.1993 to face trial for the grave and serious allegations levelled against them by the complainant.

15. The learned counsel for the petitioners submitted that the learned Trial Court, without taking into consideration the parameters of exercise of power under Section 319 of the CrPC, erred in directing the summoning and prosecution of the petitioners. He relied upon the decision of Hon'ble Apex Court in *Hardeep Singh v. State of Punjab* : (2014) 3 SCC 92 to contend that a person discharged of an offence stood on a different footing than a person who has never been subjected to investigation. He consequently submitted that if the Court found it necessary to proceed against such person so discharged, then it is mandatory that an enquiry under Section 398 of the CrPC be conducted instead of resorting to the exercise of power under Section 319 of the CrPC.

16. He submitted that in accordance with the dictum of the Hon'ble Apex Court in *Hardeep Singh v. State of Punjab* (*supra*), for a person who has been discharged, there can be no commencement of proceedings under Section 319 of the CrPC without recourse to the provisions of Section 300(5) read with Section 398 of the CrPC.

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17. He submitted that while the power under Section 319 of the CrPC is discretionary and extraordinary, the same should be exercised sparingly and only in cases where the circumstances of the case so warrant. He submitted that the test that has to be applied is one which is more than the *prima facie* test exercised at the time of framing of charge. He further submitted that the test should be such that the evidence, if unrebutted, would lead to conviction.

18. *Per contra*, the learned Additional Public Prosecutor for the State submitted that the summoning of the petitioners is necessary. He submitted that specific allegations were made by the complainant during his examination. He submitted that in line with the specific role attributed to the petitioners, their summoning under Section 319 of the CrPC is necessary.

19. The learned counsel for Respondent No. 2 submitted that serious allegations have been levelled against the petitioners in the present case. He submitted that in the light of the specific allegations made by Respondent No. 2 thereby describing the involvement of the petitioners in the commission of the offence, they ought to be summoned as accused persons.

ANALYSIS

20. In the present case, the learned MM *vide* order dated 28.08.1993 discharged the petitioners. Challenge to the said order whereby the petitioners were discharged was never made by the State, and the same has attained finality.



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21. Thereafter, the complainant had preferred an application under Section 340 of the CrPC for prosecuting the petitioners which was dismissed *vide* order dated 28.06.2010, and the revision against the same was also dismissed *vide* order dated 11.08.2010. The same also has attained finality.

22. The present petition arises out of the challenge to the impugned order dated 13.05.2019 whereby, the learned ASJ, allowed the petition filed by the State and summoned the petitioners in exercise of the power under Section 319 of the CrPC on the ground that specific allegations regarding the role of the petitioners have been made by the complainant.

23. The Hon'ble Apex Court in the case of ***Hardeep Singh v. State of Punjab*** (*supra*) in relation to the exercise of power under Section 319 of the CrPC to summon as accused persons who have already been discharged observed as under:

“112. However, there is a great difference with regard to a person who has been discharged. A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation, the court had come to the conclusion that there is not even a prima facie case to proceed against such person. Generally, the stage of evidence in trial is merely proving the material collected during investigation and therefore, there is not much change as regards the material existing against the person so discharged. Therefore, there must exist compelling circumstances to exercise such power. The court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect

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in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 CrPC without resorting to the provision of Section 319 CrPC directly.

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115. Power under Section 398 CrPC is in the nature of revisional power which can be exercised only by the High Court or the Sessions Judge, as the case may be. According to Section 300(5) CrPC, a person discharged under Section 258 CrPC shall not be tried again for the same offence except with the consent of the court by which he was discharged or of any other court to which the first-mentioned court is subordinate. Further, Section 398 CrPC provides that the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make an inquiry into the case against any person who has already been discharged. Both these provisions contemplate an inquiry to be conducted before any person, who has already been discharged, is asked to again face trial if some evidence appears against him. As held earlier, Section 319 CrPC can also be invoked at the stage of inquiry. We do not see any reason why inquiry as contemplated by Section 300(5) CrPC and Section 398 CrPC cannot be an inquiry under Section 319 CrPC. Accordingly, a person discharged can also be arraigned again as an accused but only after an inquiry as contemplated by Sections 300(5) and 398 CrPC. If during or after such inquiry, there appears to be an evidence against such person, power under Section 319 CrPC can be exercised. We may clarify that the word “trial” under Section 319 CrPC would be eclipsed by virtue of above provisions and the same cannot be invoked so far as a person discharged is concerned, but no more.

116. Thus, it is evident that power under Section 319 CrPC can be exercised against a person not subjected to investigation, or a person placed in Column 2 of the charge-sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 CrPC without taking recourse to provisions of Section 300(5) read with Section 398 CrPC.

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Question (v)—Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

Answer 117.6. 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 provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, insofar as an accused who has been discharged is concerned the requirement of Sections 300 and 398 CrPC has to be complied with before he can be summoned afresh.”

(emphasis supplied)

24. Recently, the Hon’ble Apex Court in the case of ***Yashodhan Singh v. State of U.P. : (2023) 9 SCC 108*** while summarising the position with respect to summoning as accused, a person who has already been discharged, observed as under:

“23. From the aforesaid observations of the Constitution Bench of this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86], it is noted that an inquiry is contemplated as against a person who has been discharged prior to the commencement of the trial in terms of Section 227 CrPC as extracted above but on an inquiry, if it appears that there is evidence against such a discharged person, then power under Section 319 CrPC can be exercised against such a discharged person. This clearly would mean that when a person who is not discharged but is to be summoned as per Section 319 CrPC on the basis of satisfaction derived by the court on the evidence on record, no inquiry or hearing is contemplated. This would clearly indicate that principle of natural justice and an opportunity of hearing a person summoned under 319 CrPC are not at all contemplated. Such a right of inquiry would accrue only to a person who is already discharged in the very same proceeding prior to the commencement of the trial. This is different from holding that a person who has been summoned as per Section 319 CrPC has a right of being heard in accordance with the principles of natural justice before being added as

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an accused to be tried along with other accused.”

25. The petitioners were discharged noting that with respect to the petitioner – Sarabjeet Singh, he was not named in the FIR or in the chargesheet, and that there existed no evidence to connect him with the offence. In relation to the petitioner - K S Cheema, it was observed that he was present in the office at the relevant date and time and had not availed any leave from 15.05.1989 to 25.08.1989. Further, the duly sworn affidavit of the complainant stating that the petitioners were not involved in the criminal case, and that their names were wrongly mentioned, was also taken into consideration while discharging the petitioners.

26. Sections 319, 300 of the CrPC have been reproduced as under:

“300. Person once convicted or acquitted not to be tried for same offence.—(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of Section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he

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was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under Section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of Section 26 of the General Clauses Act, 1897 (10 of 1897) or of Section 188 of this Code. Explanation.—The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.

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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 reheard; (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.

27. The short point for consideration before this Court is thus whether the learned ASJ could have summoned the petitioners in



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first resorting to the procedure prescribed under Section 398 and 300 (5) of the CrPC.

28. In the present case, the learned ASJ summoned the petitioners as accused under Section 319 of the CrPC in FIR No. 273/1989 for commission of offence under Sections 120B/ 147/ 148/ 149/ 323/ 325/ 427/447/506 of the IPC for which the other accused persons namely Sikander Singh, Lakhpat Rai, V.K. Ghai had been charged *vide* order dated 28.08.1993.

29. The learned ASJ relied upon the decision of the Hon'ble Apex Court in ***Labhuji Amratji Thakor and Others v. State of Gujarat and Another* : (2019) 12 SCC 644** wherein it was observed as under:

“6. Section 319 CrPC provides that 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. The court, thus, during the trial on the basis of any evidence is fully empowered to proceed against any person, whose name was not even included in the FIR or the charge-sheet.

7. The parameters of exercise of power under Section 319 CrPC has been explained by this Court time and again. It is sufficient to refer to the Constitution Bench judgment in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , where this Court had considered the following issue amongst others: (SCC p. 112, para 6.4) “6.4. (iv) What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?”

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10. *The Constitution Bench in Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] has given a caution that power under Section 319 CrPC is a discretionary and extraordinary power, which should be exercised sparingly and only in those cases where the circumstances of the case so warrant. The crucial test, which has been laid down as noted above is “[t]he 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” (SCC p. 138, para 106). The present is a case, where the trial court had rejected the application filed by the prosecution under Section 319 CrPC. Further, in the present case, the complainant in the FIR has not taken the names of the appellants and after investigation in which the statement of victim was also recorded, the names of the appellants did not figure. After carrying investigation, the charge-sheet was submitted in which the appellants' names were also not mentioned as accused. In the statement recorded before the police, the victim has named only Natuji with whom she admitted having physical relations and who took her and with whom she went out of the house in the night and lived with him at several places. The mother of victim in her statement before the court herself has stated that the victim girl returned to the house after one-and-a-half months. In the statement, before the court, the victim has narrated the entire sequence of events. She has stated in her statement that accused Natuji used to visit her uncle's house Vishnuji, where she met Natuji. She, however, stated that it was Natuji, who had given her mobile phone. Her parents came to know about she having been given mobile phone by Natuji, then they went to the house of Natuji and threatened Natuji. After one month, Natuji gave another mobile phone to the victim, who had taken it. She stated that in the night at 12 o'clock, Natuji along with his three friends had taken her to Morbi in a jeep. She further stated that she and Natuji stayed for three days at the said place and Natuji had intercourse with her at the said place. When Natuji came to know about lodging of complaint, he took her to Modasa in the jeep. The jeep was given by Labhuji and the other two appellants were also in the jeep. She further stated that Labhuji, Shashikant and Jituji came in the jeep and took her and Natuji to the police station, where the police interrogated her and she recorded her statement. Natuji was charged with Sections 363 and 366 IPC and Sections 3 and 4*

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of the POCSO Act.”

30. Reliance has also been placed on the judgment of the Hon’ble Apex Court in ***Rajesh and Others v. State of Haryana : (2019) 6 SCC 368*** wherein it was observed as under:

“6.8. Considering the law laid down by this Court in *Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86]* and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under Section 319 CrPC 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, 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.”

31. The decision of the Hon’ble Apex Court in ***Labhuji Amratji Thakor and Others v. State of Gujarat and Another (supra)*** in the opinion of this Court not applicable to the facts of the present Court.

32. In ***Labhuji Amratji Thakor and Others v. State of Gujarat and Another (supra)***, after receiving the FIR, the police conducted investigation and submitted chargesheet under Sections 363/366 of the IPC and Sections 3/4 of the POCSO Act against one Natuji, the accused. Therein, an application under Section 319 of the CrPC was filed by the APP contending that the victim, in her statement, had also taken the name of Labhuji,



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Shashikant and Jituji also, and prayer was made to proceed against them by initiating appropriate legal proceedings. The learned POCSO Judge, after considering the submissions of the learned counsel for the parties, rejected the application, and noted that *prima facie* it appeared that with *mala fide* intention, the name of the appellants had been disclosed. The revision petition against the same was allowed by the Hon'ble High Court. While setting aside the order of the Hon'ble High Court, it was observed that Section 319 of the CrPC provides that where in the course of inquiry, or trial of offence, it appeared from evidence that any person not being accused has committed any offence for which such person could be tried together with the accused, then the Court may proceed against such person for the offence which he appears to have committed. The issue before the Hon'ble Apex Court did not concern a situation wherein the accused persons had already been discharged by the learned Trial Court after the appreciation of evidence and the said order had attained finality.

33. In the present case, after a consideration of the facts and circumstances, the petitioners were discharged *vide* order dated 28.08.1993. This order was challenged neither by the complainant nor by the prosecution and the same attained finality.

34. The learned ASJ noted that the petitioner – K S Cheema was named in the FIR. It was noted that the complainant had also filed a detailed complaint in which he gave a detailed version of

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the occurrence. It was noted that the perusal of chargesheet revealed that sufficient evidence had come on record against the petitioner – Sarabjeet Singh as well. It was noted that the complainant, in his testimonial deposition, had specifically named both the petitioners and had also clarified the roles with regard to the commission of the offences. In this light, the learned ASJ noted that there existed more than compelling reasons that even after the order of discharge, the petitioners be summoned by exercising revisionary power under Section 398 of the CrPC read with Section 319 of the CrPC to face trial.

35. An accused once discharged can undoubtedly be summoned as accused, however, after following the provisions of Section 398 of the CrPC. The learned ASJ merely noted that there existed compelling circumstances that the petitioners be summoned in exercise of power under Section 398 of the CrPC read with Section 319 of the CrPC. However, while noting so, the learned ASJ, then went on to summon the petitioners in exercise of the power under Section 319 of the CrPC directly.

36. Section 398 of the CrPC reads as under:

398. Power to order inquiry.—On examining any record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under Section 203 or sub-section (4) of Section 204, or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under

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this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.”

37. In accordance with Section 398 of the CrPC, in a case where any person accused of an offence stands discharged, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make further inquiry. Subsequently, if during or after such inquiry there appears to be evidence against such person, then power under Section 319 of the CrPC can be exercised.

38. The nature of inquiry, at this stage, is in the discretion of the Magistrate. Consequently, such inquiry may or may not include recording of further evidence on behalf of the complainant. The Magistrate may, without recording further evidence, go on to reappreciate the materials already before it to assess whether a case is made out or not.

39. This Court has perused the testimony of the complainant recorded on 23.12.2010 after the framing of charges against the other accused. The complainant, in his examination-in-chief, stated that his friend and himself were taken to some hotel called Hotel Kingsway. He stated that his friend and himself were taken to Room No. 303 where the petitioners along with other accused persons were present who claimed themselves to be CRPF officers. He stated that all of the accused persons including the petitioners gave beatings to the complainant and his friend, and also forcibly took away their watches and a few important



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documents. He stated that the petitioner – K S Cheema gave pills to the complainant and his friend so that they could sleep. He further stated that on the following day, when the complainant and his friend woke up, they found that the accused persons and the petitioners were constantly visiting the room, and they again gave pills to the complainant and his friend. The complainant also stated that when the complainant and his friend woke up in the night thereafter, the petitioners along with other accused persons made them sit in an ambassador car and took them to a farm house.

40. The learned MM while passing the order of discharge had considered such allegations made in the FIR and had noted that there was no evidence to implicate the petitioner – Sarabjeet Singh. At such time, the petitioner – Sarabjeet Singh was not even named in the FIR. In respect of petitioner – K S Cheema, the plea of *alibi* was considered. The learned MM also considered the duly sworn affidavit of the complainant that stated that the names of the petitioners were wrongly mentioned and that they were not involved in the criminal case. Undisputedly, as discussed above, this order was not challenged by the prosecution, and the same attained finality.

41. It is equally pertinent to mention that a civil suit was initially filed by the complainant seeking permanent injunction in respect of the subject property. The said suit for permanent injunction was dismissed as withdrawn on account of the compromise effected between the parties. It is an admitted case



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that the civil suit was compromised between the parties after the filing of the charge sheet in the present criminal case, and that the complainant had also received a substantial sum for compromising the suit. The said compromise had also not been challenged by the complainant, and the same also attained finality.

42. Admittedly, neither the order of discharge nor the compromise effected between the parties were challenged. Much emphasis has been placed on the fact the sworn affidavit of the complainant were forged, however, as is evident from a perusal of the record, but for the averments made by the complainant, nothing has been appended to substantiate the contention. Once the civil suit between the parties had been compromised in respect of the subject property, and no challenge thereof was made, this Court does not deem it apposite to resuscitate the dispute. The present petition thus seems but an indirect attempt to rekindle an incident that had occurred more than 3 decades ago.

43. In the light of the dictum of the Hon'ble Apex Court in *Hardeep Singh v. State of Punjab* (*supra*), once the petitioners had been discharged, the procedure under Section 398 of the CrPC could not have been circumvented by resorting to the procedure under Section 319 of the CrPC directly.

44. It is not in doubt that the persons who have once been discharged can also be summoned as an accused person if the

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Signed By: KAMALDEEP
KAUR
Signing Date: 03.01.2025
15:41:06circumstances so warrant. However, the same can be done only
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after an inquiry as contemplated by Sections 300(5) and 398 of the CrPC is conducted, and during such inquiry there appears to be evidence against such persons.

45. The impugned order without there being any new material and without any inquiry as contemplated in Section 398 of the CrPC, is in the nature of review of earlier order of discharge which had already attained finality long back on 28.08.1993. Even otherwise, the affidavit of the complainant not naming the petitioners as accused has already been a subject matter of record before a Civil Court which has led to complainant settling the dispute. Said proceedings or the affidavit have not been challenged. Application under Section 340 of the CrPC though was filed by the complainant but the same was also dismissed and the order also attained finality.

46. In view of the aforesaid, the present petitions are allowed, and the impugned order is set aside.

AMIT MAHAJAN, J

DECEMBER 9, 2024