

(2014) 07 P&H CK 0784

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Revision Nos. 1396 and 2695 of 2012 (O&M)

Tarwinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: July 15, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 193, 200, 201, 202, 300
- Penal Code, 1860 (IPC) - Section 148, 149, 302, 304, 323

Hon'ble Judges: Anita Chaudhary, J

Bench: Single Bench

Advocate: Parminder Singh-I, Advocate for the Appellant; Gazi Mohd., Deputy Advocate General, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Anita Chaudhary, J.

These are two revisions arising out of the common order dated 03.03.2012, passed by the Additional Sessions Judge, Bathinda who allowed the application filed by the prosecution u/s 319 Cr.P.C. and the petitioners were summoned to face trial in FIR No. 95 dated 13.08.2010, registered under Sections 302/304/323/148/149 IPC.

2. Adverting to the backdrop first, Harbans Singh, father of deceased Hardeep Singh made a complaint to the police on 13.08.2010 alleging that he along with his son Hardeep Singh, Gurmeet Singh, his nephew and Buta Singh, his servant had gone to the fields. At about 2:30 PM, Hardeep Singh received a call on his mobile and he left saying that he was going towards Pandita Wala Khet. Hardeep Singh had just covered a distance of 25/26 Karams and stepped on the Talwandi-Raman main road at 2:45 PM where a big black car was parked. Four persons in the age group of 30-35 years came out of the car. One of them had tied a Parna on his head. Two of them were armed with dandas and they started beating Hardeep Singh. Hardeep Singh raised alarm. All these persons caught hold of Hardeep Singh and pushed him in

front of a bus coming from Talwandi. Hardeep Singh struck against the bus and fell on left side and those persons fled from the spot towards Talwandi Sabo. The registration number of the bus and the name of the driver was also disclosed to the police. The complainant found his son bleeding from the nose, ear and head. He died on the spot. The FIR was lodged against unidentified persons. On the next day, Gurmeet Singh made a statement on the basis of which Hardeep Singh, Tarsem Singh @ Semi, Davinder Singh, Tarwinder Singh, Kala Singh, Ajaib Singh, Jaskaran Singh and an unidentified woman were named. The registration number of the vehicle used in the commission of the crime was also disclosed. Two days later, Gurmeet made a supplementary statement and disclosed the name of Paramjit Kaur. On 15.08.2010 Gurjant Singh before whom the accused had suffered an extra judicial confession, made a statement and five persons were arrested and challan against them was presented. The remaining accused Davinder Singh, Kala Singh and Tarwinder Singh could not be arrested and investigation against them was kept pending. Meanwhile, the case was committed by the Sub Divisional Judicial Magistrate, Talwandi.

3. Charge was framed upon the accused who pleaded not guilty and claimed trial. The prosecution had examined Gurmeet Singh, an eye-witness and thereafter, the prosecution filed an application u/s 319 Cr.P.C. to summon Tarwinder Singh and Paramjit Kaur (petitioners) but that application was dismissed on 23.07.2011.

4. Aggrieved with that order, the State had filed Crl. Miscellaneous No. 1904 of 2011 which was disposed of on 24.08.2011. The apprehension of the prosecution that they would be debarred from filing subsequent application before the trial Court were met with the following observations:-

After hearing learned counsel for the petitioner, in my opinion, the apprehension is totally misconceived. The application for summoning additional accused can be filed at any stage, which is to be considered on the basis of material which comes before the Court till that date. The rejection of the application filed by the prosecution, at this stage, for summoning additional accused will not debar the petitioner from filing application at any subsequent stage in case sufficient material comes before the Court for summoning of additional accused.

5. The prosecution thereafter, examined Harbans Singh, complainant. Sukhdev Sharma, PW-3 who proved the registration certificate of the car which was found to be in the name of Hardeep Singh. Buta Singh, Patwari PW-4 proved the Warabandi. Hardev Singh PW-5 driver of the bus, however, failed to support the prosecution version and was declared hostile. The call details were proved by PW-6 Bhupinder Singh. The route permit of the bus was proved by Sukhwinder Pal PW-9. M.L. Sharma PW-10 also proved the call details. The postmortem report was proved by Dr. K.S. Brar PW-11. Thereafter, the prosecution moved the application u/s 319 Cr.P.C. for summoning Tarwinder Singh and Paramjit Kaur to face trial. The trial Court considered the evidence and allowed the application.

6. Aggrieved with the order dated 03.03.2012, the petitioners have filed separate revisions.

7. I have considered the submissions made on behalf of both the sides.

8. Before considering the submissions, it is necessary to refer to the relevant provisions which are contained u/s 319 Cr.P.C. These are read as under:-

319 Cr.P.C.-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.

9. The powers u/s 319 Cr.P.C. are conferred only on the Court and allows it to proceed against any person who is not an accused in a case before it. He can be a person named in column no. 2 of the charge-sheet or a person whose name has been disclosed in any material before the Court for the purposes of drawing the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence. The Court is the repository of justice and a duty is caused to uphold the rule of law and summon additional accused where it finds that some of them have got away by manipulating the investigation and had got themselves absolved, even though they were connected with the commission of offence. The provisions empower the Court to proceed against any person not being an accused for having committed the offence under trial.

10. Divergent views have been expressed by the Courts and there were conflicting judgments, therefore, reference was made to a three judges Bench and then a larger Bench was formed to consider the points of conflict and those have been

answered in [Hardeep Singh Vs. State of Punjab and Others etc. etc.](#), The issues that were noted by the larger Bench are contained in para no. 5 of the judgment and the conclusions are noted in para 110 which reads as under:-

Question Nos. 1 & III

Q.1 What is the stage at which power u/s 319 Cr.P.C. can be exercised?

AND

Q. III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken u/s 193 Cr.P.C. and the Sessions Judge need not wait till "evidence" u/s 319 Cr.P.C. becomes available for summoning an additional accused.? Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and u/s 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power u/s 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet. In view of the above position the word "evidence" in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No. II

Q. II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that u/s 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event u/s 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV

Q. IV What is the nature of the satisfaction required to invoke the power u/s 319 Cr.P.C. to arraign an accused? Whether the power u/s 319(1) Cr.P.C. can be exercised

only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though u/s 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person u/s 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial-therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No. V

Q. V Does the power u/s 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not chargesheeted or who have been discharged?

A. 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 u/s 319 Cr.P.C. 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 Cr.P.C. has to be complied with before he can be summoned afresh.

11. Having noted the legal position which has been clarified by the larger Bench of the Hon'ble Apex Court, the submissions made by the petitioners are now to be noticed. The first contention raised on behalf of the petitioners was that earlier an application u/s 319 Cr.P.C. was filed by the prosecution after the examination of Gurmeet Singh which was dismissed and subsequently another application was moved and since the statement of Gurmeet Singh was rejected and the Court did not find any evidence to summon the additional accused, therefore, the Court could not have relied upon Gurmeet Singh's statement. It was urged that the case of the prosecution was that the deceased was pushed before a bus but the driver of the bus did not support the prosecution story. It was then contended that the witnesses had made improvements and no name was in the FIR and the order should be set aside.

12. The submission on the other hand was that the first application was moved after the statement of Gurmeet Singh which the Court found was not sufficient to summon the additional accused but subsequently the prosecution had examined more witnesses and those have been elaborately dealt with and the role had been ascribed to the petitioners and identity of Paramjit Kaur was disclosed to the police just two days after the incident and the Court had considered the material which was produced subsequently and had found that there was material for summoning

the additional accused.

13. The record reveals that the police had laid the final report against some of the persons who were named by the witnesses. However, Davinder, Kala Singh and Tarwinder Singh could not be arrested and the investigation against them was kept pending but subsequently Davinder Singh and Iqbal were joined in the investigation and supplementary report against them was presented. Tarwinder and Paramjit Singh could not be arrested and the investigation was kept pending against them as noted by the trial Court.

14. The prosecution moved an application u/s 319 Cr.P.C. immediately after the statement of Gurmeet Singh was recorded. That application was dismissed on 23.07.2011. Aggrieved with that order, the prosecution had approached the High Court and Crl. Miscellaneous No. 1904 of 2011 was disposed of on 24.08.2011. The grievance of the petitioner was that the dismissal of the application filed by the prosecution for summoning of the accused at a later stage will debar the prosecution from filing another application at a subsequent stage when more material was produced before the Court. After noticing the submission, this Court in its order had noted that the apprehension of the petitioners were totally misconceived and the application for summoning additional accused could be filed at any stage and the Court had to consider the material which came before it till that date and rejection of the application would not debar the petitioner from filing application at any subsequent stage.

15. After the dismissal of the first application filed by the prosecution, the prosecution had led evidence and had moved another application u/s 319 Cr.P.C. to summon Tarwinder Singh and Paramjit Kaur who had been named by the witnesses at the initial stages of the investigation. The trial Court had examined the evidence and in the true sense the evidence led by the prosecution will have to be reverted or controverted and that would be at the stage of judgment by the Court. Yet at this stage it is the evidence and it is material on the basis of which the trial Court had come to a prima-facie opinion as to the complicity of some other persons who were connected with the offence.

16. The Hon"ble Apex Court in Hardeep Singh's case (supra) has clarified that there was no logic behind waiting till the cross-examination of the witnesses is over for the reason that the parties sought to be arraigned as an accused is not participating in the trial.

17. At the time of taking cognizance, the trial Court has only to see whether a prima-facie case is made out to proceed against the accused at the stage of filing the application u/s 319 Cr.P.C. Though, the test of prima-facie case is the same, the degree of satisfaction is required to be stricter. But short of satisfaction to an extent that the evidence if it goes un-rebutted would lead to conviction. Para 99 of Hardeep Singh's case (supra) reads as under:-

99. 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 u/s 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 u/s 319 Cr.P.C. to form any opinion as to the guilt of the accused.

18. A perusal of the record reveals that the police had laid the final report against some persons who were named by the witnesses but they could not arrest the others, therefore, the matter was kept pending. The prosecution had examined some witnesses and had proved the call details and the route permit of the bus, it is another matter that the bus driver failed to support the prosecution story. It is a matter which the trial Court would consider finally at the time of the judgment. It is the Court concerned which evaluates the evidence to find out the complicity of all the persons which are before it. The trial Court had rightly come to a conclusion that their existed evidence to proceed against the persons taking note of the material brought before it. I find no infirmity much less illegality in the order. Therefore, both the revision petitions are dismissed. Copy of this order be sent to the trial Court.