

HIGH COURT OF PUNJAB AND HARYANA**Bench: JUSTICE JASJIT SINGH BEDI****Date of decision: 15.01.2024**

CRR-440-2020 (O & M)

Davinder Singh @ Kala Petitioner**V/s****State of Punjab ...Respondent****Legislation:**

Section 319 Cr.P.C., Sections 308/34 IPC

Subject: Revision petition challenging the order of summoning the petitioner to face trial as an additional accused under Section 319 Cr.P.C. in a case involving allegations of assault.

Headnotes:

Summoning Under Section 319 Cr.P.C. - Revision petition against order dated 13.11.2019 for summoning petitioner as additional accused in an FIR dated 28.04.2017 under Sections 308/34 IPC - Petitioner, Davinder Singh @ Kala, challenged his inclusion in the case, arguing improvements in the injured's statements and highlighting inconsistency with medical evidence showing only one injury attributed to another accused - The Court considered whether there were reasonable prospects of the petitioner's conviction [Paras 1, 8, 14].

Inconsistency in Witness Statements - Petitioner's argument based on variations in the injured's statements from FIR, under Section 161 Cr.P.C., and in court deposition - Originally accused of inflicting injuries while the victim was on the ground, later statements added that the petitioner caught

the victim's wrist and inflicted blows - Improvements in statements noted by the Court [Paras 2, 3, 5, 6, 14].

Medical Evidence Analysis - Medical evidence (MLR) indicated only one lacerated wound on the victim, specifically attributed to co-accused Ravinder Singh @ Gogi - The Court found this incongruous with the allegations against the petitioner, suggesting possible false implication [Para 14].

Judicial Precedents on Section 319 Cr.P.C. - Reference to Supreme Court judgments including "Michael Machado vs. CBI" and "Hardeep Singh vs. State of Punjab" for principles governing the exercise of power under Section 319 Cr.P.C. - Emphasis on the need for reasonable satisfaction and higher degree of satisfaction for summoning additional accused compared to the original accused [Paras 11, 12, 13].

Decision - High Court quashed the impugned order dated 13.11.2019 by the Additional Sessions Judge, Bathinda - The Court found substantial merit in the petitioner's argument about inconsistencies and improvements in witness statements and lack of corroborative medical evidence - The petition was allowed, and the order summoning the petitioner was set aside [Paras 14, 15].

Referred Cases:

Michael Machado and another vs. Central Bureau of Investigation and another, 2000 (3) SCC 262

Hardeep Singh vs. State of Punjab, 2014 (1) RCR (Criminal) 647

Representing Advocates:

Mr. S.S. Sidhu, Advocate, for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. S.K. Khokher, Advocate, for respondents No.2 and 3.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present revision petition is for setting aside the order dated 13.11.2019 passed by the Additional Sessions Judge, Bathinda, for summoning the petitioner to face Trial as an additional accused under Section 319 Cr.P.C.

2. The brief facts of the case are that an FIR No.53 dated 28.04.2017 under Sections 308/34 IPC, Police Station Phul, District Bathinda, came to be registered at the instance of Sohan Singh who stated that on 26.04.2017, Ravinder Singh @ Gogi armed with *kasoli*, Davinder Singh @ Kala (petitioner) and Bhagwan Singh came to the spot. Ravinder Singh @ Gogi gave a *kasoli* blow on the head of his (complainant's) son/Bahadar Singh who fell down. While lying on the ground, Davinder Singh @ Kala and Bhagwan Singh inflicted injuries upon Bahadar Singh. On raising a *raula*, the accused had fled away from the spot. A copy of the FIR No.53 dated 28.04.2017 is attached as Annexure P-1 to the present petition. A cross-version bearing G.D. No.005 dated 29.04.2017, Police Station Phul, District Bathinda, was also recorded which is attached as Annexure P-2 to the petition.

3. During the course of investigation, the statement under Section 161 Cr.P.C. of Bahadar Singh, the injured was recorded wherein he reiterated the version of the FIR, as per which, Ravinder Singh @ Gogi had given him a *kasoli* blow on his head whereas Davinder Singh @ Kala and Bhagwan Singh had inflicted injuries while he had been lying on the ground.

4. On conclusion of the investigation, the report under Section 173(2) Cr.P.C. was presented against Ravinder Singh @ Gogi and Bhagwan Singh whereas Davinder Singh @ Kala was placed in Column No.II.

5. Thereafter, the statement of PW-1/Bahadar Singh was recorded, as per which while Ravinder Singh @ Gogi had given him a *kasoli* blow on his head, Davinder Singh @ Kala had caught hold of him by his wrist and he (Davinder Singh @ Kala) and Bhagwan Singh had inflicted fist blows on his stomach. The copy of the said statement dated 04.01.2019 is attached as Annexure P-5 to the petition.

6. On the same date, an application under Section 319 Cr.P.C. was moved at the instance of Bahadar Singh who stated that while Ravinder Singh @ Gogi had given a *kasoli* blow on his head, Davinder Singh @ Kala had caught hold of him by his waist and, thereafter, both Davinder Singh @ Kala and Bhagwan Singh had given kick blows in his stomach.

7. Based on the aforementioned deposition of PW-1/injured- Bahadaur Singh, the petitioner came to be summoned vide order dated 13.11.2019 passed by the Additional Sessions Judge, Bathinda, which is impugned in the present petition.

8. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. As per the version in the FIR, the petitioner is stated to have given injuries to Bahadar Singh while he was lying on the ground. Thereafter, the injured-Bahadar Singh had improved his version while appearing as PW-1 and had stated that the petitioner had held him by his wrist and when he had fellen down, the petitioner and Bhagwan Singh had given him fist blows on his stomach. However, in the application under Section 319 Cr.P.C. yet another improvement was made wherein it was stated that Davinder Singh had caught hold of him (Bahadar Singh) by his waist and that he (Davinder Singh @ Kala) and Bhagwan Singh had given kick blows on the stomach while he was lying down on the ground. Additionally, it is his contention that there was only one injury on the head of the injured which had been specifically attributed to Ravinder Singh @ Gogi. As the injured had made substantial improvements in his statements at various stages, the false implication of the petitioner cannot be ruled out, particularly, with respect to the medical evidence, as per which there was only one injury on the person of the injured. He, therefore, contends that the impugned order was liable to be set aside.

9. The learned counsels for the State as well as the complainant contend that the petitioner had been duly named in the FIR by the complainant-Sohan Singh and was attributed a specific role. The injured/PW-1 Bahadar Singh had also named the petitioner in his statement under Section 161 Cr.P.C. as also in his deposition in the Court. Therefore, the petitioner had rightly been summoned to face Trial as an additional accused on the basis of the evidence led thus far. They, therefore, contend that the present petition was liable to be dismissed.

10. I have heard the learned counsel for the parties.

11. Before proceeding further, it would be apposite to refer to the provisions of Section 319 Cr.P.C. The same are reproduced hereinbelow:-

“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 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.”*

12. The Hon'ble Supreme Court of India has dealt with the issue in hand in a number of judgments and two of the most celebrated judgements in this regard are discussed hereinbelow:-

In “**Michael Machado and another versus Central Bureau of Investigation and another, 2000 (3) SCC 262**”, the Hon'ble Supreme Court of India held as under:-

“11. The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.

12. But even then, what is conferred on the court is only a discretion as could be discerned from the words the court may proceed against such person. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that another person

also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons”.

In **“Hardeep Singh versus State of Punjab, 2014 (1) RCR (Criminal) 647”**, the Hon’ble Apex Court held as under:-

“Question No.IV

Q.IV: What is the nature of the satisfaction required to invoke the power under [Section 319](#) Cr.P.C. to arraign an accused? Whether the power under [Section 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 under [Section 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 under [Section 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”.

13. A perusal of the aforementioned judgments would show that a prospective accused can be summoned even on the basis of the examination-in-chief and cross-examination as such is not required. However, what is required is that the Court records its satisfaction that there were reasonable prospects of the conviction of the accused sought to be summoned. Further, the degree of satisfaction required for summoning an accused must be more than that required for framing charges against the existing original accused. 14. Coming back to the facts of the present case, admittedly, the present case is one of version and cross-version. As per the FIR got registered at the instance of Sohan Singh, Davinder Singh @ Kala (petitioner) and Bhagwan Singh gave injuries to Bahadar Singh while he was lying on the ground. The said version has been reiterated by Bahadar Singh in his statement under

Section 161 Cr.P.C. However, while deposing as PW-1, Bahadar Singh Stated that Davinder Singh @ Kala (petitioner) had caught hold of him by his wrist and then he (Davinder Singh @ Kala) and Bhagwn Singh raised *lalkaras* and gave fist blows on his (Bahadar Singh's) stomach. Thereafter, an application under Section 319 Cr.P.C. was moved by Bahadar Singh wherein he has stated that Davinder Singh @ Kala had caught hold of his waist and kick blows had been given by him (Davinder Singh @ Kala) and Bhagwan Singh in his (Bahadur Singh's) stomach. Quite apparently, the injured-Bahadar Singh had improved his version from stage to stage. Further, a perusal of the MLR (Annexure P-3) would reveal that there is only one lacerated wound on the parietal region which has been clearly attributed to co-accused Ravinder Singh @ Gogi. Therefore, the false implication of the petitioner cannot be ruled out and this Court cannot record a satisfaction that the petitioner has committed the offence for which he has been summoned to face Trial.

15. In view of the aforementioned discussion, I find considerable merit in the present petition. Therefore, the impugned order dated 13.11.2019 passed by the Additional Sessions Judge, Bathinda, stands quashed.
16. The present petition is disposed of accordingly.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.