Before Aman Chaudhary, J.

ANIL KUMAR—*Petitioner*(s)

versus

STATE OF HARYANA AND OTHERS—*Respondent*(s)

CRR No. 2405 of 2016

September 09, 2022

Code of Criminal Procedure, 1973—Ss. 173, 319—Indian Penal Code, 1860—Ss. 148, 149, 307, 323, 324, 506—Petition challenges impugned order whereby application under S. 319 Cr.P.C. to summon respondent Nos. 2 to 7 dismissed by Additional Sessions Judge—Held that intent behind S. 319 Cr.P.C. being no person who even 'appears' to have committed any offence be let off—The court must proceed against any person if it appears that such person not being accused has committed the offence—Trial court ought to have embarked on basis of available evidence to determine sufficiency thereof to form a prima facie view—Only upon having delved on it, keeping in view the principles governing S. 319 Cr.P.C. could the conclusion be arrived as to whether it has merit or sans merit—Impugned order set aside—Petition allowed.

Held, that interpreting the provisions of Section 319 Cr.P.C. inasmuch as the true intent thereof, that the trial Court has committed an error both in law and facts. The fact that in indubitably had persuaded Hon'ble the Supreme Court of India in the case of Manjeet Singh (supra) to set aside the order dismissing the application under Section 319 Cr.P.C. on the ground that complainant even in that case from the very beginning levelled allegations that accused had committed the offence, are present in this case as well.

(Para 15)

Further held, that the peculiarity of the facts and circumstances of the case, as well as the law laid down in the cases of Manjeet Singh, Hardeep Singh and Brijender Singh (supra), compels this Court to set aside the impugned order dismissing the application at least qua summoning respondent No.2.

(Para 16)

Vasundhra Dalal Anand, Advocate, *for the petitioner.*

Gaurav Bansal, A.A.G., Haryana.

Harsh Kinrar, Advocate, for respondent Nos. 2 to 7.

AMAN CHAUDHARY, J.

(1) The present revision petition has been filed challenging the order dated 6.6.2016 passed by the learned Additional Sessions Judge, Rohtak, whereby an application filed under Section 319 Cr.P.C. by the complainant-petitioner to summon respondent Nos. 2 to 7 as additional accused was dismissed.

Factual aspect:

(2) The facts in concise are that on 3.5.2015 at about 10.30 pm, complainant Anil Kumar was going to the house of one Jai Bhagwan for taking his motorcycle. On the way when, he reached in his street, at the same time, accused Vinod and Vickey @ Dinesh, their father Hari Ram, their wives and two sons of accused Vinod attacked him. Accused Vinod gave a farsa blow on his head and other accused inflicted danda, fist and kick blows on his hands and legs. On raising hue and cry by the complainant, Hari Pal @ Mintu, uncle of the complainant and other neighborhood gathered there and saved him from the clutches of the accused. Thereafter they ran away from the spot with their respective weapons by extending threat to eliminate him. The injured complainant was rushed to PGIMS Rohtak by his uncle. On receiving ruqa, based on the aforesaid statement of the complainant, who was the injured eye witness, an FIR no.161 dated 4.5.2015 under Sections 148, 149, 323, 324, 307, 506 IPC was registered.

Submissions:

(3) Learned counsel at the outset draws the attention of this Court to order dated 11.7.2016, whereby notice motion was issued in the case to clarify that the instant petition was not pressed qua respondent Nos. 3 to 7, but only regarding respondent No.2.

(4) Learned counsel for the petitioner submits that though the report under Section 173 Cr.P.C. was presented in the court but the investigation was not properly conducted, on account of which, 7 accused, who were attributed specific roles in the FIR were not challaned. Accordingly, it is her submission that an application dated 7.12.2015, Annexure P5, was filed by the complainant for summoning the said accused as left out by the police. A reference to para 2 of the application has been made to draw the attention of the Court to the pleadings, which are to the effect that at the time of recording of the

evidence of the complainant as PW5, all the persons who had been placed in column in No.2 by the police were present inside the court to threaten and pressure the injured complainant to compromise the matter. Learned counsel has further submitted that the learned trial Court vide the impugned order dated 25.7.2016 dismissed the application without properly appreciating the submissions made on behalf of the complainant-petitioner. In order to substantiate her arguments, makes a reference to the FIR, wherein a fact has specifically been mentioned that the complainant had in no uncertain terms got recorded that Vinod, respondent No.2 herein gave a '*farsa'* blow and Vicky an iron rod blow on his head. In order to corroborate the said assertion, a reference has been made to MLR of the injured-complainant, Annexure P-3 (colly), wherein two head injuries caused to him were mentioned, one of which at Sr. No.1 was an incised wound. In this regard, the learned counsel makes a reference to the statement of injuredcomplainant, PW5, Annexure P-2, wherein also he had reiterated that accused Vinod- respondent No.2 herein had inflicted '*farsa'* blow on hishead while Vicky an iron rod blow on his head.

(5) Having referred to and placed reliance on the aforesaid documents, the learned counsel has submitted that inspite of the aforesaid overwhelming evidence, the learned trial Court had erred in noticing and recording only one fact that the MLR shows that there is incised wound on the head of the injured-complainant and had no other head injury. Besides the aforesaid it recorded that as per the version of the complainant, accused Dinesh @ Vicky had inflicted iron rod blow on his head and the said iron rod type sharp edged weapon was also recovered. It is the case of thelearned counsel that the 2nd injury on the head of the injured complainant even though specifically recorded in the MLR as also attributed by the complainant twice over, firstly in the FIR and secondly in his statement while appearing as PW5 does not even find mentioned in the said order.

(6) Learned counsel places reliance on the judgment rendered by the Hon'ble Supreme Court of India in ***Hardeep Singh*** *versus* ***State of Punjab***[1], with a specific reference to paras 11, 12, 16 and 69.

(7) Per contra, learned counsel appearing on behalf of respondent No.2 contends that the impugned order was passed after

[1] 2014 (3) SCC 92

appreciating all facets of the case and thus requires no inference. He further submits that in order to summon an additional accused, there must be evidence more than the statement of the injured. A reference is made to a cross-case also, which was registered against the petitioner by the respondent-party alleging that the complainant petitioner herein had thrown bricks and stones at their house, which caused injures to the grandson of father of respondent no.2. Learned counsel submits that the police had rightly placed all the private respondents herein in column no.2 in the report under Section 173 Cr.P.C. upon which the trial Court had discharged them. In view of there being being no evidence against them the learned trial Court had rightly dismissed the application filed under Section 319 Cr.P.C. The learned counsel also refers to the same judgment in the case of ***Hardeep Singh*** *(supra)* with specific reference to paras 95, 105 and 106 and judgment in the case of ***Brijendra Singh and another*** *versus* ***State of Rajasthan***[2] with specific refernece to para 12 and 13, wherein paras 95, 105 and 106 of the ***Hardeep Singh*** *(supra)* had been reproduced, to contend that for exercise of power under Section 319 Cr.P.C. there should be more than prima facie evidence and satisfaction to an extent that the evidence goes unrebutted, would lead to conviction.

(8) Having heard the arguments advanced by the learned counsel for the parties at a considerable length.

Legal apsect:

(9) For the proper appreciation of the matter, the provisions of Section 319 Cr.PC as well as the manner in which it has been interpreted with regard to its scope, is deemed apposite to be referred at the firstinstance.

Section 319 Cr.P.C. reads thus:-

> 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] 2017(4) JT 530

> (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 a fresh, and the witnesses re- heard;
>
> (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accusedperson when the Court took cognizance of the offence upon which the inquiry or trial wascommenced.

(10) A bare reading of the aforesaid section reveals that the word used is when it 'appears' from the evidence that any person not being the accused has committed the offence, the court may proceed against such person.

(11) The intent behind the aforesaid provision being that no person, who even appears to have committed any offence must be let off. This is the primary intent of rule of law.

(12) Reference is required to be made to the indubitable pronouncement of Hon'ble the Supreme Court of India in the case of ***Manjeet Singh*** *versus* ***State of Haryana and others***[3], while relying on the judgment of the Constitution Bench in the case of ***Hardeep Singh*** *(supra),* had framed 5 questions for considering application under Section 319 Cr.P.C. found the reasoning of the High Court while affirming the order of the trial Court dismissing the application under Section 319 Cr.P.C. on the ground that statement of the complainant indicated over implication and that no injury has been attributed to either of the respondents except that they were armed with weapon and the concerned injuries were attributed to a co-accused and even if some else was present alongwith him it could not be said that they had any common intention or there was meeting of mind or new that co-accused would be firing, to be not sustainable. Hon'ble the Supreme

[3] 2021 SCC 632

Court of India set aside the judgment ofthe High Court on account of the fact that the allegations against the accused persons right from the very beginning were of having committed the offence under which, the FIR had been registered and held that both the trial Court and the High Court had failed to exercise the jurisdiction and/or powers under Section 319 Cr.P.C. As a consequence thereof, the application submitted on behalf of the complainant to summon the private persons was allowed and the trial court was directed to summon them toface trial. Paragraph relating to the above, reads thus:

> "The High Court has lost sight of the fact that the allegations against all the accused persons right from the very beginning were for the offences under Sections 302, 307, 341, 148 & 149 IPC. The High Court has failed to appreciate the fact that for attracting the offence under Section 149 IPC only forming part of unlawful assembly is sufficient and the individual role and/ or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to either of the respondents except that they were armed with weapons and therefore, they cannot be added as accused is unsustainable. The learned trial Court and the High Court have failed to exercise the jurisdiction and/ or powerwhile exercising the powers under Section 319 Cr.P.C."

Analysis:

(13) Now adverting to the facts and circumstances of the present case, in the MLR of Anil-injured-petitioner, the following injures are mentioned:-

> "1. Incised wound c clear cut margin fresh bleeding of side 7cmx 0.25 cm horizontally place over vortex of skull
>
> 2. Swelling present over left side of face just lateral to left eye."

(14) It may be accentuated at the outset, the factum of ocular version at the hands of injured-complainant, who is the petitioner herein, himself having been duly corroborated by the medical evidence, leaves no scope of doubt, that least of all, the trial Court ought to have considered and recorded the the correct facts as borne out from the testimony of PW5- complainant and MLR by their cojoint reading. The specific attribution of a role in the incident to respondent No.2 being a *farsa* blow on the head of the injured complainant and

injuries reflected in the MLR, the trial Court ought to have embarked on basis of the available evidence to determine the sufficiency thereof for it to form a prima facie view, so as to arrive at a satisfaction to an extent that such evidence, if goes unrebutted, would lead to conviction. Only upon first having delved on it, keeping in view of the principles governing Section 319 Cr.P.C. could the conclusion be arrived as to whether it has merit or *sans* merit.

Conclusion:

(15) Having implored with the aforesaid pronouncement in the case of ***Manjeet Singh*** *(supra),* wherein the judgment of the Constitution Bench of Hon'ble the Supreme Court of India in the case of ***Hardeep Singh*** *(supra)* has been relied upon, interpreting the provisions of Section 319 Cr.P.C. inasmuch as the true intent thereof, that the trial Court has committed an error both in law and facts. The fact that in indubitably had persuaded Hon'ble the Supreme Court of India in the case of ***Manjeet Singh****(supra)* to set aside the the order dismissing the application under Section 319 Cr.P.C. on the ground that complainant even in that case from the very beginning levelled allegations that accused had committed the offence, are present in this case as well.

(16) The peculiarity of the facts and circumstances of the case, as well as the law laid down in the cases of ***Manjeet Singh, Hardeep Singh and Brijender Singh*** *(supra),* compels this Court to set aside the impugned order dismissing the application at least qua summoning respondent No.2.

(17) Resultantly, the present petition is allowed and the order dated 6.6.2016, is hereby set aside qua respondent No.2.

(18) Nothing herein shall be treated as an expression on the merits of the case and the trial court shall proceed and decide the matter, independent of any observation made in the present judgment, which was only for the purpose of adjudicating the present petition.

Divya Gurnay