

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.1985 OF 2013  
(Arising out of SLP (Crl.) No.5411of 2010)

MANPREET  
Appellant(s)

KAUR

VERSUS

STATE OF PUNJAB & ORS.

Respondent(s)

With

CRIMINAL APPEAL NO.1986 of 2013  
(Arising out of SLP (Crl.) No.7403of 2010)

KULDEEP KAUR

Appellant(s)

VERSUS

STATE OF PUNJAB & ANR.

Respondent(s)

O R D E R

Leave granted.

These appeals arise out of a common order dated 21st April, 2010 passed by the High Court of Punjab and Haryana whereby Criminal Revision No.1129 of 2010 filed by the appellant against an order passed by the Additional Sessions Judge (Adhoc) Fast Track Court, Gurdaspur, summoning the appellant as an accused under Section 319 Cr.P.C. has been dismissed and the order passed by the Court below affirmed.

We have heard learned counsel for the parties at some length. The legal position as regards the test to be applied for addition of a person not sent up for trial has been examined by this Court in a long line of decisions delivered from time to time. In Machael Machado and Anr. v. Central Bureau of Investigation and Anr. 2000 (3) SCC 262 this Court while dealing with a similar question observed:

"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, had 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 in the Court to proceed against other persons."

The above decision was followed by this Court in *Krishnappa v. State of Karnataka* 2004 (7) SCC 792 wherein the power to summon an accused not sent up for trial was described as an extra ordinary power to be used sparingly and only if compelling reasons exist for taking cognizance against such person. To the same effect is the decision in *Guriya v. State of Bihar* (2007) 8 SCC 224 and in *Mohd. Shafi v. Mohid Rafiq* (2007) 14 SCC 544. Suffice it to say that the decisions of this Court have considered addition of an accused under Section 319 Cr.P.C. to be permissible only in exceptional cases and if the Court is satisfied that the accused so summoned would in all likelihood be convicted for the offence with which he is charged. Learned counsel for the appellant referred to an order passed by a coordinate Bench in *Hardeep Singh v. State of Punjab and Ors.* (2009) 16 SCC 785 where a reference to a larger Bench has been made for formulation of guidelines for exercise of power under Section 319 Cr.P.C. The reference in that case proceeds on the basis that the discretion vested in the Court in terms of *Krishnappa's* case (supra) is substantially curtailed by a subsequent decision of this Court in *Mohd. Shafi's* case (supra). In *Krishnappa's* case (supra) this Court held that the power can be exercised only if there are compelling reasons to do so, while in *Mohd. Shafi's* case (supra) this Court held that the power can be exercised only if the Court is satisfied that the accused so summoned is likely to be convicted on the basis of the material available on record. Whatever be the correct interpretation of Section 319 Cr.P.C., the amplitude of the power available to the Court and the standard which the Court has to apply to the question of addition of an accused, the addition can never be ordered unless there is a reasonable basis to do so. It is that reasonable basis which we find missing in the instant case. We say so, because there is hardly any material apart from the deposition of PW1-complainant in the case who was not an eye-witness to the occurrence to justify that the appellants in these two cases were party to the conspiracy that led to the killing of the deceased.

The Trial Court and the High Court have referred to what is described as a compact disk produced before the Court in the course of trial. It is common ground that contents of the CD have not yet been proved in accordance with law. Even the High Court has not referred to the contents in support of its conclusion that the material on record justified the summoning of the appellants.

Learned counsel for the respondent-State argued that the conduct of appellant Manpreet Kaur was dubious inasmuch as while the appellant had, during the pendency of another criminal case before the Magistrate, addressed a letter to that Court suggesting that she was in love with the deceased and the deceased was likely to be harmed by her family members, she had during the course of an inquiry, conducted by the Superintendent of Police resiled from that statement. The letter allegedly written has also not been proved at the trial so far. Assuming any such letter was addressed by the appellant to the Magistrate concerned and assuming that in the course of the inquiry conducted by the superintendent of Police she had resiled from that statement, the same would not, in our opinion, provide a prima facie basis to hold that she was a party to the alleged conspiracy that led to the elimination of her paramour. Suffice it to say that as at present there is no material on the basis of which the appellants could have been summoned by the trial court under Section 319 of Cr.P.C. The trial court as also the High Court, therefore, fell in error in doing so.

In the result we allow these appeals, set aside the judgments and orders passed by the Courts below summoning the appellants under Section 319 of Cr.P.C. as an accused. We, However, make it clear that if during the course of the trial the trial court at any stage finds evidence sufficient to justify summoning of the appellants or anyone of them, it shall be free to invoke its power under Section 319 of the Cr.P.C. in accordance with law.

.....J.  
(T.S. THAKUR)

.....J.  
(VIKRAMAJIT SEN)

NEW DELHI  
DATED 22nd November, 2013

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s).1985 OF 2013  
(Arising out of SLP(Crl.)No.5411 of 2010)

MANPREET KAUR Appellant(s)

VERSUS

STATE OF PUNJAB & ORS. Respondent(s)

With

CRIMINAL APPEAL No(S).1986 of 2013  
(Arising out of SLP(Crl.)No.7403 of 2010)

KULDEEP KAUR Appellant(s)

VERSUS

STATE OF PUNJAB & ANR. Respondent(s)

O R D E R

CrI.A.No.1985 of 2013  
(Arising out of SLP(Crl.)No.5411 of 2010):

Leave granted.

This appeal arises out of an order dated 21st April, 2010 passed by the High Court of Punjab and Haryana whereby Criminal Revision No.1129 of 2010 filed by the appellant against an order passed by the Additional Sessions Judge (Adhoc) Fast Track Court, Gurdaspur, summoning the appellant as an accused under Section 319 Cr.P.C. has been dismissed and the order passed by the Court below affirmed.

We have learned learned counsel for the parties at some length. The legal position as regards the test to be applied for addition of a person not sent up for trial is fairly well-settled by the decisions of this Court in Kans Raj v. State of Punjab and Others - (2000) 5 SCC 207, Michael Machado and Anr. v. Central Bureau of Investigation and Anr. - (2000) 3 SCC 262 and a long line of similar other decisions in which this Court has in no uncertain terms held that a party not sent up for trial as an accused person can be summoned by the court under Section 319 of the Cr.P.C. only if there is some material on basis of which the court can prima facie hold that there are reasonable prospects of the person concerned being found guilty of the offence with which he is sought to be charged. The inquiry in every case such where Section 319 of the Cr.P.C. is invoked therefore has to be whether the material on record can lead to a reasonable conclusion that a possible conviction can be recorded against the person(s) sought to be summoned.

The High Court has in the order impugned before us referred to the decisions on the subject but failed to apply the legal test stated therein inasmuch as the High Court has stopped short of holding that the material on record was sufficient to result in the conviction of the appellant

before us. Independent of what the High Court has done, we have looked at the material that was available before the trial court and are of the opinion that apart from the depositions of PW-1-Kuldeep Kaur who happens to be the complainant in the case but not an eye-witness to the occurrence there is no other evidence so far brought on record against the appellant-Manpreet Kaur. The trial court and so also the High Court have simply referred to what is described as a compact disc (C.D.), which the complainant appears to have produced before the trial court during the course of his deposition, the contents whereof have not yet been proved in accordance with law. The High Court has also not referred to the contents of the C.D. in support of its conclusion that the material on record justifies the summoning of the appellant.

Learned counsel for the respondent-State argued that the conduct of the appellant was dubious inasmuch as while the appellant had, during the pendency of another criminal case before the Magistrate, addressed a letter to that Court suggesting that she was in love with the deceased and the deceased was likely to be harmed by her family members, she had during the course of an inquiry, conducted by the Superintendent of Police resiled from that statement. The letter allegedly written has not so far been proved at the trial. Assuming any such letter was addressed by the appellant to the Magistrate concerned and assuming that in the course of the inquiry conducted by the superintendent of Police she had resiled from that statement, the same would not, in our opinion, provide a prima facie basis to hold that her conduct was incriminating in any way nor would it show that she was a party to the alleged conspiracy that led to the elimination of her paramour. Suffice to say that at present there is no material on the basis of which the appellant could have been summoned by the trial court under Section 319 of Cr.P.C. The trial court as also the High Court therefore fell in error in doing so.

In the result we hereby allow this appeal, set aside the judgments and orders passed by the Courts below summoning the appellant under Section 319 of Cr.P.C. as an accused. We however make it clear that if during the course of the trial the trial court at any stage finds evidence sufficient to justify summoning of the appellant, it shall be free to invoke its power under Section 319 of the Cr.P.C. in accordance with law.

CrI.A.No.1986 of 2013  
(Arising out of SLP(CrI.)No.7403 of 2010):

Leave granted.

In the light of what we have said in our order in CrI.A. No.1985 of 2013 (Arising out of SLP(CrI.)No.5411 of 2010), we see no reason to take a different view for in this case also there is hardly any material as at present against the appellant to warrant her addition as an accused. The appeal is according allowed, the judgments and orders passed by the courts below, summoning the appellant as an accused person under Section 319 of the Cr.P.C. set aside with the observation that if at any future stage the trial court is of the view that sufficient evidence is available on record justifying summoning of the appellant, the trial court shall be free to invoke its power under Section 319 of the Cr.P.C. in accordance with law.

.....J.  
(T.S. THAKUR)

.....J.  
(VIKRAMAJIT SEN)

NEW DELHI  
DATED 22nd November, 2013.

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CrI.A.No. 1985 of 2013 (Arising out of  
Petition(s) for Special Leave to Appeal (CrI) No(s).5411/2010)

(From the judgement and order dated 21/04/2010 in CRLR No.1129/2010, of The  
HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

MANPREET KAUR Petitioner(s)

VERSUS

STATE OF PUNJAB & ORS. Respondent(s)

(With appln(s) for stay and office report)

WITH CrI.A.No. 1986 of 2013 (Arising out of SLP(CrI) NO. 7403 of 2010)  
(With appln.(s) for exemption from filing c/c of the impugned judgment and  
exemption from filing O.T., stay and office report)

Date: 22/11/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR  
HON'BLE MR. JUSTICE VIKRAMAJIT SEN

For Appellant (s) Mr. Vikas Mahajan,Adv.  
Mr. A.N.Singh,Adv.  
Mr. Dharam Bir Raj Vohra,Adv.  
Mr. Bhaskar Y. Kulkarni,Adv.

For Respondent(s) Mr. Jayant K. Sud,AAG  
Mr. Vishal Dabas,Adv.  
Mr. Ujas Kumar,Adv.  
Mr. Kuldip Singh,Adv.

Ms. Shikha Roy,Adv.  
Mr. Ajay K. Singh,Adv.  
Ms. Nistha Chawla,Adv.  
Mr. S.K. Sabharwal,Adv.

Mr. Arvind Kumar Sha,Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order:

"In the result we allow these appeals, set aside the  
judgments and orders passed by the Courts below summoning the  
appellants under Section 319 of Cr.P.C. as an accused. We,  
However, make it clear that if during the course of the trial the  
trial court at any stage finds evidence sufficient to justify  
summoning of the appellants or anyone of them, it shall be free to  
invoke its power under Section 319 of the Cr.P.C. in accordance  
with law."

|(Mahabir Singh)  
| Court Master

|(Veena Khara)  
| Court Master

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(Signed order is placed on the file)