

**Sr. No. 207
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**CRM No. M-11711 of 2013
Date of Decision: 28.10.2015**

Kamal Kumar

...Petitioner

Vs.

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

Present: Mr. Sanjeev Manrai, Senior Advocate with
Mr. Gaurav Talraj, Advocate,
for the petitioner.

Mr. Kapil Aggarwal, Additional A.G.Haryana.

Mr. S.S.Momi, Advocate,
for respondent No.2.

RAMESHWAR SINGH MALIK, J.

Instant petition under Section 482 Code of Criminal Procedure (for short 'Cr.P.C.'), is directed against the order dated 16.01.2013, passed by the learned Additional Sessions Judge, Kurukshetra, whereby impugned order dated 14.05.2010, passed by the learned Sub Divisional Judicial Magistrate, Pehowa, summoning the petitioner as an additional accused to face the criminal trial, was upheld.

Notice of motion was issued and pursuant thereto short reply was filed on behalf of the respondent-State.

Learned senior counsel for the petitioner submits that impugned orders passed by the learned Courts below are palpably

illegal as the same are running contrary to the law laid down by the Hon'ble Supreme Court ***Hardeep Singh Vs. State of Punjab and others, 2014 (1) RCR (Crl.) 623***. He further submits that the learned trial Court proceeded on a factually incorrect and legally misconceived approach, while passing the impugned summoning order under Section 319 Cr.P.C., whereby the petitioner was summoned as an additional accused to face the criminal trial, arising out of FIR No. 406 dated 11.11.2007 under Sections 420 and 506 IPC, registered at Police Station Pehowa. He concluded by submitting that since there was not even a prima facie case against the petitioner, he could not have been summoned with the aid of Section 319 Cr.P.C. He prays for allowing the present petition.

Learned counsel for the State as well as learned counsel for the complainant submit that since there was sufficient evidence against the petitioner, he was rightly summoned as an additional accused to face the criminal trial, arising out of above said FIR. The validity of the impugned order passed by the learned trial Court was subject matter of consideration before the learned revisional Court, which also rightly dismissed the revision of the petitioner vide impugned judgment dated 16.01.2013 and both the impugned orders deserve to be upheld. They pray for dismissal of the present petition.

After hearing learned counsel for the parties and going through the record of the case, this Court is of the considered opinion that since the impugned orders passed by the learned Courts below have been found contrary to the law laid down by the Hon'ble Supreme Court of India in ***Hardeep Singh's case (supra)***, the same

cannot be sustained and the present petition deserves to be accepted.

In this regard, the latest constitution bench of the Hon'ble Supreme Court of India, in Hardeep Singh's case (supra), has set this controversy at rest. Ratio of the judgment contained in para 99 reads as under:-

“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 under Section 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 under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused.”

A bare reading of the above said law laid down by the Hon'ble Supreme Court, would make it crystal clear that now the requirement of law for exercising powers under Section 319 Cr.P.C. by any learned trial Court in the country, is more than a prima facie case against the person sought to be summoned as an additional

accused to face the criminal trial. So far as the present case is concerned, the learned trial Court has proceeded to pass the impugned order on the basis that a prima facie case was made out against the petitioner for summoning him under Section 319 Cr.P.C.

Having said that, this Court feels no hesitation to conclude that the impugned order passed by the learned trial Court is patently illegal. Similarly, since the learned revisional Court also failed to appreciate the requirement of law to exercise the powers under Section 319 Cr.P.C., the impugned revisional order has resulted in miscarriage of justice, thus, both the impugned orders cannot be sustained.

No other argument was raised.

Considering the peculiar fact situation of the present case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the learned Courts below have exceeded their jurisdiction while passing the impugned orders and the same cannot be sustained. Consequently, the impugned order dated 14.05.2010, passed by Sub Divisional Judicial Magistrate, Pehowa (Annexure P-3) as well as the order dated 16.01.2013, passed by learned Additional Sessions Judge, Kurukshetra (Annexure P-4), are hereby, quashed.

Resultantly, with the above said observations made, present petition stands allowed, however, with no order as to costs.

28.10.2015

vandana

**(RAMESHWAR SINGH MALIK)
JUDGE**