

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2589-2014 (O&M)
Date of decision: 30.10.2015

Billu and ors.

... Petitioners

Vs.

State of Haryana and anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Vijay Kumar, Advocate for
Mr. Sanjay Mittal, Advocate
for the petitioners.

Mr. Surender Singh, AAG, Haryana.

Mr. Amit Sharma, Advocate for
Mr. Rajneesh Dadwal, Advocate
for respondent No.2.

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

RAMESHWAR SINGH MALIK, J.

Feeling aggrieved against the impugned order dated 22.07.2014 passed by learned Sessions Judge, allowing application of the prosecution under Section 319 of the Code of Criminal Procedure ('Cr.P.C.' for short), thereby summoning the petitioners as additional accused to face the criminal trial, petitioners have approached this Court, by way of instant criminal revision petition, for setting aside the impugned order.

Notice of motion was issued.

Learned counsel for the petitioners submits that learned trial Court has misdirected itself, while passing the impugned order which runs counter to the law laid down by the Hon'ble Supreme Court in its latest judgment on the subject i.e. **Hardeep Singh Vs. State of Punjab and ors., 2014 (3) SCC 92**. He prays for setting aside the impugned order, by allowing the present petition.

On the other hand, learned counsel for the State as well as learned counsel for the complainant-respondent No.2 submit that the learned trial Court has proceeded on a factually correct and legally justified approach, while passing the impugned order and the same deserves 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 the since the impugned order has been found running contrary to the law laid down by the Hon'ble Supreme Court in **Hardeep Singh's** case (supra), the same cannot be sustained. It is so said because the learned trial Court has completely misread the ratio of judgment in **Hardeep Singh's** case (supra). Observations made by the learned trial Court that decree of satisfaction of the Court for summoning the person under Section 319 Cr.P.C., would be the same as for framing of charge, is clearly against the law laid down by the Hon'ble Supreme Court in para 99 of its judgment in **Hardeep Singh's** case (supra), thus, the impugned order cannot be sustained.

The ratio of the judgment in **Hardeep Singh's** case (supra) 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 unrebutted, 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.”

The learned trial Court has proceeded on a factually incorrect and legally misconceived approach, while exercising its powers under Section 319 Cr.P.C. on the ill-founded presumption that decree of satisfaction was the same as required for framing of charge, which is no more the law. In view of the law laid down by the Hon'ble Supreme Court in **Hardeep Singh's** case (supra), decree of satisfaction is more than a prima facie case, so as to enable the learned Courts to exercise their powers under Section 319 Cr.P.C. for summoning any person as an additional accused to face the criminal trial. Since the learned trial Court has failed to appreciate the latest legal position in

view of the Constitution Bench judgment of the Hon'ble Supreme Court in **Hardeep Singh's** case (supra), the impugned order has been found suffering from patent illegality and the same cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition deserves to be accepted. Consequently, impugned order dated 22.07.2014 passed by learned Sessions Judge, is hereby set aside.

Resultantly, with the abovesaid observations made, present criminal revision petition stands allowed, however, with no orders as to costs.

[**RAMESHWAR SINGH MALIK**]
JUDGE

30.10.2015
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