

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRR No. 2685 of 2015(O&M)

Date of decision : 30.07.2015

Maya Devi

..... Petitioner

Versus

State of Haryana and others

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ashok Arora, Advocate
for the petitioner.

DARSHAN SINGH,J(Oral)

1. The present petition has been filed against the order dated 10.07.2015 passed by learned Additional Sessions Judge, Bhiwani, whereby the application filed by the petitioner/complainant under Section 319 of Code of Criminal Procedure (for short 'Cr.P.C') for summoning Santosh wife of Om Parkash, Sunita daughter of Om Parkash, Sushila daughter of Krishan Kumar and Pardeep son of Krishan Kumar as additional accused has been dismissed.

2. Learned counsel for the petitioner contended that there are specific allegations against respondents no.2 to 5

for having actively participated in the commission of the crime in the FIR as well as in the statement of complainant Maya Devi recorded by the Court. They have also caused injuries to complainant Maya Devi, Somi Devi and Poonam Devi, the handicapped daughter of complainant Maya Devi. Thus, he pleaded that the impugned order suffers from material infirmity and there was no reason to decline the application moved by the petitioner.

3. I have duly considered the aforesaid contentions.

4. The present case was registered on the statement of petitioner Maya Devi against Om Parkash, Krishan son of Madha Ram, Santosh wife of Om Parkash (respondent no.2), Vikas son of Om Parkash, Sunita daughter of Om Parkash (respondent no.3), Santosh wife of Krishan, Reshma daughter of Krishan, Sushila daughter of Krishan (respondent no.4) and Pardeep son of Krishan (respondent no.5) on the allegations that due to dispute of raising the construction of a wall, the aforesaid persons caused injuries to complainant Maya Devi, her daughter-in-law Somi Devi and her daughter Poonam Devi. During the investigation, respondents no.2 to 5 were found innocent.

5. After recording of the part statement of petitioner Maya Devi, an application under Section 319 Cr.P.C was moved by the petitioner for summoning respondents no.2 to

5 as additional accused, which was dismissed vide impugned order dated 10.07.2015.

6. Section 319 Cr.P.C provides that 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.

7. A Constitution Bench of the Hon'ble Apex Court in case **Hardeep Singh Vs. State of Punjab and others 2014(1) R.C.R (Criminal) 623**, has very exhaustively dealt with the interpretation of Section 319 Cr.P.C and the test which has to be applied for exercising the power therein. The Hon'ble Apex Court has laid down 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."

8. As per the aforesaid ratio of law laid down by the Hon'ble Apex Court, the test which has to be applied is more than *prima facie* as exercised at the time of framing charges but short of satisfaction to an extent that the evidence, if goes un rebutted would lead to conviction.

9. Here, in this case, there are only the general type of allegations against respondents no.2 to 5 in the FIR as well as in the statement of complainant Maya Devi. No specific role has been assigned to them in the commission of this crime. No doubt, the names of respondents no.2 to 5 figures in the FIR, but in the absence of any specific role assigned to them for the commission of the offence, the test of more than *prima facie* as laid down by the Hon'ble Apex Court in the case referred above can not be stated to have been fulfilled.

10. Thus, keeping in view my aforesaid discussion,

the petitioner has not been able to make out the case to summon respondents no.2 to 5 as additional accused. So, I do not find any illegality in the impugned order dated 10.07.2015 passed by the learned Additional Sessions Judge, Bhiwani.

11. Consequently, the present petition carries no substance and the same is hereby dismissed.

30.07.2015

s.khan

**(DARSHAN SINGH)
JUDGE**