

CRM No. M-15369 of 2016
DECIDED ON: OCTOBER 07, 2016

.....PETITIONER

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

Present : Mr. Himanshu Sharma, Advocate
for the petitioner.

JASPAL SINGH, J.

Instant petition has been preferred by Premo Devi under Section 482 Cr.P.C, feeling dissatisfied against orders dated March 05, 2016 passed by learned Additional Sessions Judge, Ambala and order dated June 05, 2015 whereby, an application moved by her under Section 319 Cr.P.C for summoning respondents No.2 to 4 as additional accused to stand trial alongwith their co-accused, in case bearing FIR No. 172, dated June 12, 2013, under Section 323 and 506 IPC, registered at Police Station Parao, was dismissed.

The contention of learned counsel for the petitioner is that the impugned order(s) are absolutely against the evidence available on file and settled cannons of law. Misappreciation of evidence brought on record by the prosecution has resulted into miscarriage of justice. No doubt, Karanvir Singh,

Shamsher Kaur and Beant Kaur were found innocent during investigation and at the time of presentation of challan their names were mentioned in column No.2 of the report. But when Premo Devi-complainant appeared in the witness box before learned trial Court, she has categorically named these three persons but learned trial Court did not appreciate factual matrix of the case while summoning these persons as additional accused, rather dismissed the application under Section 319 Cr.P.C. Therefore, the impugned order(s) are not sustainable in the eyes of law and are liable to be set aside. Consequently, application moved by the petitioner under Section 319 Cr.P.C. deserves to be allowed.

This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner but found the same to be of no legal weight.

By now, it is pretty settled that while dealing with an application under Section 319 Cr.P.C, court should not summon a person as an additional accused and pass an order mechanically merely on the ground that some evidence had come on record showing implication of a person and further that power envisaged under Section 319 Cr.P.C. is to be used sparingly only if there is convincing evidence against the person(s) sought to be summoned as an additional accused. To fortify this view, we can have reference of the pronouncement of Hon'ble Apex Court captioned as **Krishnappa vs. State of Karnataka; 2004 (4) RCR 679** as well as that of our own High Court titled as **Manoj Kumar vs. Prabhu Ram; 2003 (4) RCR 887.**

Recently in case **Hardeep Singh vs. State of Punjab and others; 2014 (3) SCC 92;** power envisaged under Section 319 Cr.P.C. was discussed at length. The relevant paragraphs of the above-referred judgment reads as under:

“98. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

99. 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.”

A perusal of the afore-said paragraphs discloses that power under Section 319 Cr.P.C. is to be exercised sparingly being discretionary and extraordinary and that too, in those cases where circumstances of the case so warrant. It has further been laid down that no doubt, only a *prima facie* case is to be established by the prosecution by way of evidence led before the court and the same is not required to be tested on the anvil of cross-examination, yet, it has also

been observed that it requires much stronger evidence than mere probability of the complicity of a person to be summoned as an additional accused. The test that has to be applied is one which is more *prima facie* case as exercised at the time of framing of charge but short of satisfaction to an extent that the evidence, if left un rebutted would lead to conviction. Therefore, mere statement of Premo Devi which can be termed to be an improved version is not sufficient to summon respondents No.2 to 4 as an additional accused.

Here, it would not be out of place to mention that initially, Premo Devi while recording her statement before the police on April 25, 2013 unfolded that when she was tethering cattles in her plot, meanwhile, Joginder came there and caught hold her neck by saying to teach a lesson for abusing him and on this, he gave fist on her head, as a result thereof, she fell down. Her sons rescued her from him. While leaving place, he said that today she has been rescued by her sons, but in future if she abused, then he will cause more injuries. In pursuance of her statement no cognizable offence was found to be made out and subsequently, she moved complaint before Magistrate on June 01, 2013 and it was sent to concerned police station for registration of case. However, in that complaint she improved her previous statement by levelling allegations against family members of Joginder Singh. Since, none of family member was present as per her previous version, therefore, the improvement in the version unfolded by Premo Devi while instituting the complaint is suggestive of the fact that she has created an after thought story just to involve respondents No.2 to 4. It can be safely concluded that there is no evidence warranting the summoning of respondents No.2 to 4 as an additional accused.

As an up-shot of the aforesaid discussions, this Court does not find

any merit in the instant revision petition. As such, the same is dismissed whereby impugned order(s) are upheld.

OCTOBER 07, 2016
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>