

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

**CRM-20954 of 2016 in/and
CRR-2462 of 2016 (O&M)
Date of Decision: 29.07.2016**

Jamshed

.....Petitioner

versus

State of Haryana and others

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. D.S.Matya Advocate for the petitioner.

Mr. Amrik Narwal, DAG, Haryana.

Mr. Saleem Ahmed, Advocate for respondents No.2 to 4.

AJAY TEWARI, J. (Oral)

CRM-20954 of 2016

Service is complete.

Learned counsel for respondents No.2 to 4 states that he would not oppose the prayer for condonation of delay.

For the reasons recorded, the application is allowed and delay of 23 days is condoned.

CRR-2462 of 2016

This petition has been filed against the order of the trial Court declining an application under Section 319 Cr.P.C.

As per the allegations in the FIR the complainant-Jamshed heard the sound of shouts from outside his house and when he went from the house Nyajuddin @ Nyaju and respondent No.2-Liyakat were thrashing Kashmiri wife of Faku. When he tried to *inter se* they both started blaming him and Nyaju shot at him and then both of them escaped. When the injured were being taken to the hospital respondent No.3-Miskina and respondent No.4-Khushbu pelted stones at them. The police proceeded only against Nyaju and held that respondents No.2, 3 and 4 were not complicit in the crime. The application under Section 319 Cr.P.C. was dismissed primarily on the ground that there was previous enmity between the parties (which could cause false implication) and also that there was a delay of one day in lodging the FIR.

Learned counsel for the petitioner has argued that the injuries on Kashmiri have not at all been explained and apart from the gun shot injuries there are blunt weapon injuries on the person of Jamshed also.

Without commenting on the merits and keeping in view the dictum of the Supreme Court in ***Hardeep Singh etc. vs. State of Punjab and Others etc., 2014(1) RCR (Criminal) 623***, wherein the Supreme Court held as follows:-

“98. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary 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 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.”

In my considered opinion, it would be appropriate to summon respondent No.2 for the offences under Section 319 Cr.P.C. Ordered accordingly. Revision stands allowed qua respondent No.2.

However as regards respondent No.3 and 4, the revision is dismissed.

Since the main case has been decided, the Criminal Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

July 29, 2016
Pooja sharma-I

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No