

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

CRR-3904-2016

Date of decision-24.10.2016

Balbir Singh

...Petitioner

Vs.

State of Haryana and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sachin Mittal, Advocate for the petitioner.

JITENDRA CHAUHAN, J. (Oral)

This revision petition is directed against the order dated 05.08.2016 vide which application filed by the prosecution for summoning the petitioner as additional accused under Section 319 of Criminal Procedure Code (in short 'Cr.P.C.') was allowed and the petitioner was summoned to face trial under Section 302 of Indian Penal Code.

It is contended by learned counsel for the petitioner that there is a contradiction between the statement of Zile Singh and that of complainant, namely, Ajay Chaudhary. The complainant is not the eye witness to the occurrence. In fact, one Zile Singh is the eye witness to the occurrence who after seeing the occurrence telephonically informed the complainant that his father had been murdered by Megh Raj. As per Zile Singh, the murder was committed by Megh Raj and the name of the petitioner did not figure in his statement. It is further contended that polygraphy test was conducted upon the petitioner wherein he was found to be innocent. Therefore, the charge sheet/challan under Section 173 Cr.P.C was presented against the Megh Raj

only. Consequently, the order dated 05.08.2016 summoning the petitioner is bad in law.

I have heard learned counsel for the petitioner and gone through the case file.

In the case of **Hardeep Singh Vs. State of Punjab 2014(3) SCC 92**, it was held as under:-

“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 the instant case, the name of the petitioner finds mention in the initial version recorded under Section 154 Cr.P.C. by the complainant. The occurrence is stated to have taken place on 18.06.2015 and the FIR was also registered on the same date. Further while appearing as prosecution witness, complainant has reiterated his stand and deposed that along with

Megh Raj, present petitioner was also one of the culprits. Therefore, there is sufficient material on record to summon the petitioner under Section 319 Cr.P.C. By applying the ratio laid down in **Hardeep Singh** (supra), the learned trial Court has committed no illegality or perversity in its order.

In view of the incriminating evidence on record, this Court feels that the order of summoning has been rightly passed by the trial Court. There is no scope for interference.

Consequently, petition stands dismissed.

(JITENDRA CHAUHAN)
JUDGE

October 24, 2016

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No