

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

**CRR No. 870 of 2015
DECIDED ON: OCTOBER 17, 2016**

HARMESH LAL

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. H.S. Randhawa, Advocate
 for the petitioner.

Mr. RPS Sidhu, AAG, Punjab.

Mr. S.S. Khaira, Advocate
for respondent No.2.

JASPAL SINGH, J

By virtue of this revision petition, petitioner has challenged the order dated November 04, 2014 passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Hoshiarpur whereby, an application under Section 319 Cr.P.C. moved by complainant through prosecution for summoning Bhupinder Singh as an additional accused to stand trial alongwith his co-accused in FIR No. 49, dated 17.09.2011, registered at Police Station Gardhiwala, Hoshiarpur, under Sections 307, 326, 323, 324, 427 and 34 IPC,

has been dismissed.

2. The contention of learned counsel for the petitioner is that the impugned order is absolutely against the evidence available on file and settled cannons of law. Mis-appreciation of evidence brought on record by the prosecution has resulted into miscarriage of justice. He further submits that learned trial Court has ignored the law laid down by the Hon'ble Apex Court in the case of **Hardeep Singh vs. State of Punjab and others; 2014 (3) SCC 92.** He further contends that a prima facie evidence was required for the purpose of summoning and not the cogent evidence sufficient for recording the conviction. The complainant while appearing in the witness box as PW-7 has categorically stated that the accused Chanpreet Singh, Karnadeep Singh, Panjab Singh and Bhupinder Singh have waylaid his car and had given injuries with Khanda Kirpan to him and damaged his car with the help of Khanda blow on the car and that all the accused with an intention to kill him gave injuries with Khanda and Kirpan on his head. But the testimony of Harmesh Lal-complainant has been ignored and disbelieved by learned trial Court while declining the application under Section 319 Cr.P.C. Since there is specific role attributed to Bhupinder Singh, the impugned order is not sustainable in the eyes of law and is liable to be set aside. Consequently, application moved by the prosecution under Section 319 Cr.P.C. deserves to be allowed.

3. After bestowing due consideration to the above-said submissions made by learned counsel for the petitioner and scrutinizing the impugned order, this Court does not find any substance.

4. Undoubtedly, Harmesh Lal-complainant is the author of the FIR.

However, the perusal of FIR and evidence as led on record by the prosecution reveals that no cogent and convincing evidence is on the file to summon Bhupinder Singh as an additional accused. Moreover, there is no specific role has been attributed to Bhupinder Singh.

5. 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.**

6. It has also been held by this Court in the case of **Attar Singh vs. Amarjit Singh & others; 2009 (3) RCR (Criminal) 647;** that when no specific role has been attributed to the accused, then he cannot be summoned on an application under Section 319 Cr.P.C. This Court has further held in the case of **Meena Devi vs. Narender; 2003 (4) RCR (Criminal) 849;** that when the allegations against the person are general in character then he cannot be summoned on an application under Section 319 Cr.P.C. to stand trial. Moreover, it can also be safely inferred that there is an active participation of Bhupinder Singh, who has been sought to be summoned as an additional accused. Here it can also be said that there is no evidence brought on record by

the prosecution after the conclusion of investigation during the investigation of this case to summon Bhupinder Singh as an additional accused.

7. This Court is of the considered view that impugned order is absolutely in consonance with the evidence available on file and settled canons of law. There is no infirmity or illegality in the impugned order.

8. In the light of what has been discussed above this Court does not find any merit in the instant petition. As such, the same is dismissed.

OCTOBER 17, 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>