

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

**CRM No.M-23526 of 2016
Date of decision: 16.03.2017**

Kailash

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Dr. A.K. Bishnoi, Advocate for the petitioner.

Mr. Amrik Narwal, DAG, Haryana.

Mr. Ramesh Goyat, Advocate for respondent No.2.

REKHA MITTAL J.

By invoking Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.'), the present petition directs challenge against orders dated 06.01.2016 (Annexure P1) passed by the Judicial Magistrate Ist Class, Hisar and dated 23.05.2016 (Annexure P2) by the Additional Sessions Judge, Hisar whereby the petitioner has been summoned as an additional accused under Section 319 Cr.P.C. to face trial by the Judicial Magistrate Ist Class and the order has been affirmed by the Revisional Court.

Counsel for the petitioner has submitted that the petitioner is the married sister of Dhanna Ram – husband of the complainant. She performed marriage in the year 2008 and is leading a blissful married life with her husband Naresh and staying in her matrimonial home in village Bachher, Tehsil Rania, District Sirsa. The complainant and brother of the petitioner namely Dhanna Ram got married in the year 2011 and the instant FIR No.424 for offence under Sections 498-A,

323, 406, 506 IPC was registered at Civil Lines, Hisar on 27.05.2013. It is further argued that in the FIR, the complainant raised general and vague allegations against the petitioner and her mother-in-law with a view to make the net wider and wreck vengeance because of marital disharmony between the complainant and her husband. It is vehemently argued that the petitioner was declared innocent during investigation and there is no fresh material brought on record justifying summoning of the petitioner as an additional accused. It is further submitted that the order passed by the trial Court is conspicuously silent as to the offence for which the petitioner is to face trial along with the accused already before the Court. The last submission made by counsel is that the orders passed by the Courts cannot stand the test of judicial scrutiny when examined in the light of authoritative enunciation of law laid down by the Constitution Bench of Hon'ble the Supreme Court of India ***“Hardeep Singh vs State of Punjab and others”*** with connected cases, **2014(1) RCR (Criminal) 623**.

Counsel for the State of Haryana assisted by counsel for the complainant has supported the impugned order with the submission that the petitioner was specifically named and attributed specific role in the FIR and so also the statement of the complainant recorded by the trial Court on 01.08.2015, therefore, there is sufficient material to justify exercise of jurisdiction under Section 319 Cr.P.C.

I have heard counsel for the parties, perused the paperbook particularly the orders impugned and judgment of the Apex Court in ***Hardeep Singh's case (supra)***.

At the outset, it is pertinent to mention that the trial

Magistrate decided the application under Section 319 Cr.P.C. in January, 2016 but did not bother to consider landmark judgment in ***Hardeep Singh's case (supra)***. The Court in the operative part of the order, recorded in para 6, after referring to the key words in Section 319 Cr.P.C. has held, extracted hereinbelow:-

“.....The main question in exercising power under this Section is that whether evidence available on case file, Court is satisfied that accused was involved in offence at any point of time. After perusal of case report this Court finds that in complaint given to the police the name of Kailash was mentioned and said Kailash is sister of accused Dhanna Ram. At this stage it cannot be said that she is innocent.”

Further in opening line of para 7, it has been held that *“this Court is satisfied that material against Kailash is available on the file.”*

The manner and tenor of the order passed by the Judicial Magistrate, by no stretch of imagination, satisfies the requirements for exercise of extraordinary jurisdiction under Section 319 Cr.P.C., laid down in the authoritative enunciation in ***Hardeep Singh's case (supra)*** wherein the Court while answering question No.iv *“whether the power under Section 319(1) Cr.P.C. can be exercised only if the Court is satisfied that the accused summoned will in all likelihood be convicted?”*, has held, quoted 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.”

The trial Court has not at all adverted to evidence led before the Court while recording its satisfaction to summon the petitioner in exercise of jurisdiction, to be used sparingly.

The Revisional Court without correctly appreciating substance of the order passed by the trial Court has put its seal thereon though in para 5 (operative para) it has taken note of judgment of Hon'ble the Supreme Court in ***Hardeep Singh's case (supra)***. Once it was found that the trial Court has not recorded its satisfaction much less in consonance with the test laid down in ***Hardeep Singh's case (supra)***, there was no option with the Revisional Court except to set-aside the order and remit the matter to the trial Court for decision afresh. In the light of above, orders passed by the Courts below cannot be sustained and hereby set-aside.

For the foregoing reasons, the petition is allowed, impugned orders are set-aside and the matter is remitted to the trial Court for decision of the application under Section 319 Cr.P.C. afresh with a direction to examine the case in the light of ratio laid down in ***Hardeep Singh's case (supra)***. It is clarified that the petitioner shall not be entitled to be heard in the matter at the stage of deciding the

application under Section 319 Cr.P.C. However, the prosecution may adduce some additional evidence before the application under Section 319 Cr.P.C. is decided.

(REKHA MITTAL)
JUDGE

16.03.2017
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No