

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

CRR-3957 of 2016 (O&M)

Date of decision: 18.12.2017

Saloon Devi

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. S.S. Mor, Advocate
for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

Mr. S.K. Birla, Advocate
for respondent Nos. 2 to 5 & 7.

Mr. Vivek Suri, Advocate for respondent No.6.

Jitendra Chauhan, J. (Oral)

This revision has been filed against the impugned order dated 03.10.2016 passed by Additional Sessions Judge, Bhiwani, whereby the application filed by the petitioner under Section 319 Cr.P.C. for summoning respondent Nos. 2 to 7 in FIR No.11 dated 09.02.2016, registered under Section 498-A, 376(2), 494, 506 and 420 IPC at Police Station Women Police, Bhiwani, was dismissed.

It is asserted that the petitioner though is a legally

wedded wife of co-accused Parveen, who allegedly took the petitioner to his house and committed rape on her but refused to acknowledge the factum of marriage in society. Respondent Nos. 2 to 7 being the family members of co-accused Parveen are the facilitators of the crime. The petitioner has also paid different amounts to the said respondents on different dates. The statement made by the petitioner under Section 164 Cr.P.C. has also not been considered by the summoning Court. In view of the specific role and the fact that the respondents had a motive to help co-accused Parveen, they deserve to be summoned under Section 319 Cr.P.C.

On the other hand, the learned counsel for the State and learned counsel for the private respondents state that the main accused, Parveen has already been acquitted by the trial Court, vide judgment dated 29.04.2017, therefore, the present petition deserves to be dismissed.

Heard.

Section 319 of the Code reads as under:-

“Section 319 Cr.P.C., Power to proceed against other persons appearing to be guilty of offence.-

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the

offence which he appears to have committed.

- (2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.*
- (3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.*
- (4) Where the Court proceeds against any person under sub-section (1), then-*
 - (a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;*
 - (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”*

It is a settled principle of law that in the exercise of its jurisdiction under section 319 of the Code, the Court is under a bounden duty to examine whether the evidence on record is sufficient to form a subjective opinion regarding the conviction of the persons so sought to be summoned to face trial. In **Hardeep Singh** Vs. **State of Punjab**, rendered in 2014(3) SCC 92, it was held as under:-

“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.”

The persons sought to be summoned are relatives of main accused, Parveen who has been acquitted by the trial Court. Moreover, nothing material has been found against respondent Nos. 2 to 7 during the investigation and they had been kept in column No.2 of the final police report. Since the main accused has already been acquitted and in the light of the above facts and circumstances, this Court finds no infirmity or illegality in the impugned order dated 03.10.2016. Accordingly, the present revision petition is dismissed.

18.12.2017

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(JITENDRA CHAUHAN)
JUDGE

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