

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

**CRR No.251 of 2017 (O&M)
Decided on: 07.09.2017**

Seema Devi

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Parmod Parmar, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Chanderhas Yadav, Advocate
for respondents No.2 and 3.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting-aside the order dated 04.01.2017 passed by the trial Court dismissing the application filed under Section 319 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.').

It would be relevant to notice here that on an earlier occasion after recording the statement of PW8 – Seema Devi wife of Virender Singh (since deceased), the petitioner has filed an application under Section 319 Cr.P.C. before the trial Court which was dismissed and, thereafter, the petitioner challenged that order by way of filing CRR No.2009 of 2016. The said revision petition was disposed of by this Court vide order dated 27.05.2016 by passing the following order:-

“Vide impugned order, an application filed by the petitioner under Section 319 Cr.P.C for summoning Pushpa wife of Rajender and Pooja daughter of Rajender who had allegedly entered the house of the petitioner

being members of unlawful assembly and had killed the husband of the petitioner by assaulting him with 'kulhari' 'lathis' and 'danda'.

Learned counsel for the petitioner submits that the names of Pushpa and Pooja have been specifically mentioned in the FIR and the role has been attributed to them that they were present with 'danda' and had raised 'lalkara' besides causing injuries on the person of deceased.

With the assistance of learned counsel for the petitioner, I have gone through the nature of the allegations made by the petitioner in FIR and the statement of complainant as PW-8 made in the Court.

*The trial Court has carefully appreciated the material available on the record to form an opinion regarding the participation of respondents No. 5 and 6 by applying the tests as held in **Hardeep Singh Vs. State of Punjab, 2014 (1) R.C.R. (Criminal) 623.***

I do not find any ground to interfere in the order of the trial Court passed after appreciating the statement of the petitioner and considering the other circumstances regarding the prima facie culpability of respondents No. 5 and 6 and applying parameters as held in Hardeep Singh' case (supra) and dismissing the application under Section 319 Cr.P.C. The revision petition is thus liable to be dismissed without prejudice to the other legal rights of the petitioner.

Learned counsel for the petitioner, at this stage, submits that one more material witness is yet to be examined and the testimony of the said witness may have bearing on the determination of the culpability of the accused who are sought to be added as additional accused. Seeking permission to file a fresh application under Section 319 Cr.P.C on the basis of changed

circumstances, counsel for the petitioner prays for withdrawal of the present petition.

Disposed of as withdrawn with liberty to the petitioner to avail alternative remedy available to him at opportune time in accordance with law.”

Thereafter, the prosecution recorded the statement of PW11 – Yasodha daughter of Virender Singh (since deceased), one another injured witness who has deposed on the same line as PW8 – Seema Devi has deposed. The allegations levelled against the petitioner in the statement of PW11 are that Pushpa and Pooja were having dandas in their hands and they exhorted and started inflicted injuries with their respective weapons on Virender Singh. Similar was the statement made by PW8 – Seema Devi which was considered by this Court while passed the order dated 27.05.2016.

Counsel for the petitioner has submitted that it has come in the statement of PW11 that both Pushpa and Pooja have actively participated in commission of offence and have caused injuries to deceased – Virender Singh and, therefore, the trial Court has wrongly dismissed the application filed under Section 319 Cr.P.C.

On the other hand, counsel for the State as well as counsel appearing for respondents No.2 and 3 have submitted that no such, more than *prima facie* evidence has come on record, on the basis of which the trial Court could have invoked the provisions of Section 319 Cr.P.C. The trial Court while passing the impugned order has made the following observations:-

“8. In view of the law laid down by the Hon'ble Supreme Court of India as referred above, if the facts of

the present case are considered it can be seen that the complainant in her statement before the police has named Smt. Pushpa and Ms. Pooja to be accompanying the other accused persons at the spot at the time of occurrence. Thus, their names have figured in the FIR as well as in the statements of witnesses recorded under Section 161 Cr.P.C. Undoubtedly, complainant Smt. Seema Devi, while appearing as PW8 has also named them to be present at the place of occurrence but the police while filing the report under Section 173 Cr.P.C. has categorically mentioned that the abovesaid persons were not found to be present at the spot at the time of occurrence during the investigation. Even from the statement of the complainant made before the police as well as in the Court it is not evident that the said Smt. Pushpa and Ms. Pooja actually participated in the occurrence as no overt act has been attributed to them in the commission of offence. Thus, from the evidence collected by the police and the statement of the complainant PW8 Smt. Seema Devi before the police and while appearing in the Court, it cannot be held that the abovesaid persons committed any offence as claimed by the learned Public Prosecutor for the State and learned counsel for the complainant. The reliance can also be placed on Guriya @ Tabassum Tauquir and others vs State of Bihar 2007(4) Recent Criminal Reports 497 Supreme Court of India regarding non-attribution of overt act in commission of offence to the person sought to be summoned as additional accused.

9. In Hardeep Singh case (supra) it has been held that 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 present case, in my considered opinion, the evidence

on record does not satisfy the said test and therefore in the absence of such satisfaction the abovenamed persons cannot be summoned as additional accused in the present case.”

After hearing the counsel for the parties, I find no merit in this petition. Once the petitioner has already availed the remedy of filing the application under Section 319 Cr.P.C. which was dismissed by the trial Court and despite assailing that order, this Court has not shown any indulgence to set-aside the said order, the second application filed after recording the statement of PW11 who has deposed on the similar line as of PW8, the trial Court has rightly dismissed the second application vide impugned order dated 04.01.2017.

No ground for interference is made out.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

07.09.2017
yakub

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