

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

**CRR-548-2017
Decided on: 24.07.2017**

Surinderpal Kaur

.... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. B.S. Jatana, Advocate,
for the petitioner.

Mr. V.G. Jauhar, Sr. DAG, Punjab.

Mr. K.S. Ahluwalia, Advocate,
for respondent No.2.

SUDIP AHLUWALIA, J (ORAL)

Names of respondents No.2 and 3 alongwith others were mentioned as culprits in the original FIR lodged at the instance of the petitioner. However, challan against these two respondents was not presented by the Police, although it was submitted against rest of the accused named in the FIR.

During the course of trial, the complainant as PW-2 gave statements again implicating the respondents, after which an application under Section 319 of the Cr.P.C., to summon them was filed on behalf of the prosecution.

The Ld. Court below vide its impugned order dated 16.11.2016, rejected the same in relation to the respondents on two separate reasonings.

In relation to respondent No.3, the Ld. Court below observed that the material emerging against him was not cogent/satisfactory to

warrant his summoning notwithstanding the fact that he was named in the FIR. In respect of respondent No.2 (Rampal Singh), the application was rejected on a rather technical ground, since it transpired that enquiry against this accused was still pending before the Deputy Superintendent of Police. As such, in the opinion of the Ld. Court below, the prayer for his summoning at that stage was pre-mature, on account of which *'further proceedings against Ram Pal Singh can only be initiated after the presentation of the final report under Section 173 of Cr.P.C., after the conclusion of investigation....'*

So far as respondent No.3 (Tej Pal) is concerned, the Ld. Trial Court did not find sufficient material against him and a Coordinate Bench of this Court on 16.02.2017 had also ordered issuance of notice only upon the respondent-State and respondent No.2, i.e., Ram Pal Singh. To that extent, the order in relation to Tej Pal can safely be treated as having attained finality.

However, in relation to respondent No.2 Ram Pal Singh, the approach adopted by the Ld. Court below would appear to be uncalled for. The settled law on this point is contained in observations of the Constitutional Bench of the Supreme Court in **“Hardeep Singh vs. State of Punjab and another”** 2014(1) ADJ 727, wherein it has observed 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".

So, in the given facts and circumstances, the Ld. Court below ought to have considered the prayer for summoning the said respondent on the basis of evidence having come forward before it through the statement of the complainant (PW-2) as well as from all other available material on record, and the order in such an eventuality, was not contingent upon the alleged pending enquiry by the Deputy Superintendent of Police. From the impugned order, it is seen that statements implicating respondent No.2 were actually made by the complainant in her deposition, although text of the same is not reproduced.

For the aforesaid reasons, the impugned order passed by the Ld. Court below, is quashed and it is directed that Ld. Trial Court shall pass a fresh order on the same application under Section 319, qua respondent No.2 Ram Pal Singh, on the basis of the actual material available on its judicial file within a period of three weeks from the date of communication of this order.

(SUDIP AHLUWALIA)
JUDGE

24.07.2017
Dinesh

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